



Carbon Farming Initiative Amendment Act 2014

No. 119, 2014

An Act to amend the *Carbon Credits (Carbon Farming Initiative) Act 2011*, and for other purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 119, 2014

An Act to amend the *Carbon Credits (Carbon Farming Initiative) Act 2011*, and for other purposes

[Assented to 25 November 2014]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Carbon Farming Initiative Amendment Act 2014*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	25 November 2014
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	13 December 2014 (F2014L01691)
3. Schedule 2, Parts 1 and 2	1 July 2016.	1 July 2016
4. Schedule 2, Part 3	The day after this Act receives the Royal Assent.	26 November 2014

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Purchase of eligible carbon credit units by the Commonwealth

Division 1—Amendments

Carbon Credits (Carbon Farming Initiative) Act 2011

1A Subsection 3(2) (heading)

Repeal the heading, substitute:

Climate Change Convention and Kyoto Protocol etc.

1B Subsection 3(2)

Omit “to implement certain obligations that Australia has under”, substitute “to remove greenhouse gases from the atmosphere, and avoid emissions of greenhouse gases, in order to meet Australia’s obligations under any or all of the following”.

1C Paragraph 3(2)(a)

Omit “and”.

1D At the end of subsection 3(2)

Add:

; (c) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol.

1 At the end of section 3

Add:

Purchase of carbon abatement by the Commonwealth

(5) The fourth object of this Act is to authorise the purchase by the Commonwealth of units that represent carbon abatement.

2 Section 4

Before:

Schedule 1 Amendments

Part 1 Purchase of eligible carbon credit units by the Commonwealth

- An Australian carbon credit unit is personal property and is generally transferable.

insert:

- Australian carbon credit units and certain other types of units may be purchased by the Commonwealth.

3 Section 5

Insert:

carbon abatement means:

- (a) the removal of one or more greenhouse gases from the atmosphere; or
- (b) the avoidance of emissions of one or more greenhouse gases.

carbon abatement contract has the meaning given by section 20B.

carbon abatement contractor has the meaning given by section 20B.

carbon abatement purchasing process has the meaning given by section 20F.

Commonwealth Registry account has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

Doha Amendment means the amendments to the Kyoto Protocol that:

- (a) were adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, in Decision 1/CMP.8; and
- (b) are set out in Annex I to that Decision.

Note 1: The Doha Amendment was adopted in Doha, Qatar, in December 2012.

Note 2: The Doha Amendment could in 2014 be viewed on the United Nations Framework Convention on Climate Change website (<http://www.unfccc.int>).

eligible carbon credit unit means:

- (a) a Kyoto Australian carbon credit unit; or

(b) a prescribed eligible carbon unit.

Emissions Reduction Fund Register means the register kept under section 167.

legislative rules means rules made under section 308.

3A Section 5 (at the end of the definition of *prescribed eligible carbon unit*)

Add:

A unit must not be prescribed for the purposes of this definition unless the unit represents carbon abatement that is able to be used to meet Australia's climate change targets under:

- (c) the Kyoto Protocol; or
- (d) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol.

For the purposes of the application of the definition of *Kyoto Protocol* to paragraph (c), if the Doha Amendment is not in force for Australia, the Doha Amendment is taken to be in force for Australia.

4 Section 5 (definition of *Register of Offsets Projects*)

Repeal the definition.

5 After Part 2

Insert:

**Part 2A—Purchase of eligible carbon credit units
by the Commonwealth**

Division 1—Introduction

20A Simplified outline of this Part

- | |
|---|
| <ul style="list-style-type: none">• The Regulator may, on behalf of the Commonwealth, enter into contracts for the purchase by the Commonwealth of eligible carbon credit units.• Such a contract is to be known as a carbon abatement contract. |
|---|

- The Regulator may enter into a carbon abatement contract as the result of a carbon abatement purchasing process.
- The Regulator may conduct carbon abatement purchasing processes on behalf of the Commonwealth. Such processes may include reverse auctions and tender processes.
- The Regulator must have regard to certain principles and other matters when conducting a carbon abatement purchasing process.

Division 2—Carbon abatement contracts

20B Carbon abatement contracts

- (1) The functions of the Regulator include entering into contracts, on behalf of the Commonwealth, for the purchase by the Commonwealth of eligible carbon credit units.
- (2) It is immaterial whether the units are in existence when the contract is entered into.
- (3) For the purposes of this Act, a contract entered into under subsection (1) is to be known as a *carbon abatement contract*.
- (4) For the purposes of this Act, if the Regulator enters into a carbon abatement contract with a person, the person is a *carbon abatement contractor*.

20C When carbon abatement contracts may be entered into

- (1) The Regulator may enter into a carbon abatement contract under section 20B as the result of a carbon abatement purchasing process conducted by the Regulator under section 20G.
- (2) The Regulator must not enter into a carbon abatement contract under section 20B unless the carbon abatement contractor for the contract is a project proponent for an eligible offsets project.

Note: For declarations of eligible offsets projects, see section 27. The requirements for such a declaration include that the project proponent for the project passes the fit and proper person test.

20CA Duration of carbon abatement contracts

- (1) In setting the duration of a proposed carbon abatement contract, the Regulator must have regard to the following matters:
 - (a) such matters as are specified in the legislative rules;
 - (b) such other matters (if any) as the Regulator considers relevant.
- (2) In exercising the power to make legislative rules for the purposes of paragraph (1)(a), the Minister must have regard to the following matters:
 - (a) the principle that, in general, the duration of a carbon abatement contract for the purchase of Australian carbon credit units should not be longer than 7 years;
 - (b) the principle that a longer duration of a carbon abatement contract for the purchase of Australian carbon credit units may be appropriate if the units are, or are to be, derived from an eligible offsets project that has a crediting period of more than 7 years;
 - (c) such other matters (if any) as the Minister considers relevant.

20D Regulator has powers etc. of the Commonwealth

- (1) The Regulator, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth's capacity as a party to a carbon abatement contract.
- (2) Without limiting subsection (1):
 - (a) an amount payable by the Commonwealth under a carbon abatement contract is to be paid by the Regulator on behalf of the Commonwealth; and
 - (b) an amount payable to the Commonwealth under a carbon abatement contract is to be paid to the Regulator on behalf of the Commonwealth; and
 - (c) the Regulator may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns a carbon abatement contract.

20E Conferral of powers on the Regulator

The Regulator may exercise a power conferred on the Regulator by a carbon abatement contract.

Division 3—Carbon abatement purchasing processes

20F Carbon abatement purchasing process

For the purposes of this Act, a *carbon abatement purchasing process* means any of the following processes:

- (a) a reverse auction;
- (b) a tender process;
- (c) any other process;

for the purchase by the Commonwealth of eligible carbon credit units. (It is immaterial whether the units are in existence when the process is conducted.)

20G Conduct of carbon abatement purchasing processes

- (1) The Regulator may, on behalf of the Commonwealth, conduct one or more carbon abatement purchasing processes.
- (2) In exercising the power conferred by subsection (1), the Regulator must have regard to:
 - (a) the principles set out in subsection (3); and
 - (b) such other matters (if any) as are specified in the legislative rules.

Principles for conduct of carbon abatement purchasing processes

- (3) The principles for conducting a carbon abatement purchasing process are that the process should:
 - (a) facilitate the Commonwealth purchasing carbon abatement at the least cost; and
 - (b) maximise the amount of carbon abatement that the Commonwealth can purchase; and
 - (c) be conducted in a manner that ensures that administrative costs are reasonable; and
 - (d) be conducted in a manner that ensures the integrity of the process; and

- (e) encourage competition; and
 - (f) provide for fair and ethical treatment of all participants in the process.
- (4) To avoid doubt, the mere fact that a person is a project proponent for an eligible offsets project does not automatically entitle the person to participate in a carbon abatement purchasing process.

Division 4—Miscellaneous

20H Legislative rules may provide for certain matters relating to purchased eligible carbon credit units etc.

- (1) The legislative rules may make provision for and in relation to any or all of the following matters in respect of eligible carbon credit units purchased by the Commonwealth under carbon abatement contracts:
- (a) transferring purchased units to a specified Commonwealth Registry account;
 - (b) prohibiting or restricting the transfer of units from such an account;
 - (c) cancelling units for which there are entries in such an account.

Note: For designation of Commonwealth Registry accounts, see section 12 of the *Australian National Registry of Emissions Units Act 2011*.

Restoration of units that were transferred by mistake

- (2) If:
- (a) one or more eligible carbon credit units were transferred from a Registry account kept by a person to a Commonwealth Registry account specified in legislative rules made for the purposes of paragraph (1)(a); and
 - (b) the units have been cancelled; and
 - (c) the Regulator is satisfied that the units were transferred by mistake;
- then:
- (d) the Regulator must, by written notice given to the person, determine that the units that were transferred are ***restored units*** for the purposes of this section; and

Schedule 1 Amendments

Part 1 Purchase of eligible carbon credit units by the Commonwealth

- (e) a restored unit is taken never to have been cancelled; and
 - (f) the Regulator must make an entry for a restored unit in a Registry account kept by the person.
- (3) Subsection (2) does not affect the validity of the removal of the entry of a restored unit from the Commonwealth Registry account.
 - (4) A determination made under paragraph (2)(d) is not a legislative instrument.

20J Certain instruments relating to Commonwealth procurement are not applicable

- (1) An instrument made under section 105B of the *Public Governance, Performance and Accountability Act 2013* does not apply in relation to the functions and powers of the Regulator under section 20B or 20G of this Act.

Note: Section 105B of the *Public Governance, Performance and Accountability Act 2013* provides for the making of instruments relating to procurement.

- (2) To avoid doubt, the Commonwealth Procurement Rules made under the *Financial Management and Accountability Regulations 1997* do not apply in relation to the functions and powers of the Regulator under section 20B or 20G of this Act.

20K Carbon abatement contracts are not instruments made under this Act

To avoid doubt, a carbon abatement contract is taken not to be an instrument made under this Act.

6 After Division 2 of Part 12

Insert:

Division 3—Information about units purchased by the Commonwealth

163 Information about carbon abatement purchasing processes

After the Regulator conducts a carbon abatement purchasing process, the Regulator may publish on the Regulator’s website any or all of the following information:

- (a) when the process was conducted;
- (b) the weighted average price for eligible carbon credit units that the Commonwealth is purchasing as a result of the process;
- (c) such other summary information (if any) relating to the process as the Regulator considers appropriate;
- (d) such other statistics (if any) relating to the process as the Regulator considers appropriate.

163A Annual reports about purchases of eligible carbon credit units

As soon as practicable after the end of each financial year, the Regulator must publish on the Regulator’s website:

- (a) the total amount of carbon abatement that will result from the purchase of eligible carbon credit units by the Commonwealth under carbon abatement contracts entered into during the financial year; and
- (b) the total amount that the Commonwealth will be liable to pay for the purchase of eligible carbon credit units under carbon abatement contracts entered into during the financial year; and
- (c) the total number of eligible carbon credit units that were transferred to the Commonwealth during the financial year as a result of carbon abatement contracts; and
- (d) the total amount that the Commonwealth has paid during the financial year for the purchase of eligible carbon credit units under carbon abatement contracts; and
- (e) such other summary information (if any) relating to the purchase of eligible carbon credit units by the Commonwealth under carbon abatement contracts as the Regulator considers appropriate; and

- (f) such other statistics (if any) relating to the purchase of eligible carbon credit units by the Commonwealth under carbon abatement contracts as the Regulator considers appropriate.

7 Division 5 of Part 12 (heading)

Repeal the heading, substitute:

Division 5—Emissions Reduction Fund Register

8 Section 167 (heading)

Repeal the heading, substitute:

167 Emissions Reduction Fund Register

9 Subsections 167(1), (2), (3) and (4)

Omit “Register of Offsets Projects”, substitute “Emissions Reduction Fund Register”.

10 Subsections 168(1) and (3)

Omit “Register of Offsets Projects” (wherever occurring), substitute “Emissions Reduction Fund Register”.

11 At the end of section 168

Add:

Carbon abatement contracts

- (5) The Emissions Reduction Fund Register must set out, for each carbon abatement contract that has been entered into:
 - (a) the name of the carbon abatement contractor; and
 - (b) the duration of the contract; and
 - (c) the name of the eligible offsets project for which the carbon abatement contractor is a project proponent; and
 - (d) the number of eligible carbon credit units that the carbon abatement contractor has contracted to sell to the Commonwealth under the contract; and

- (e) the number of eligible carbon credit units that the carbon abatement contractor has sold to the Commonwealth under the contract.

12 Subsection 169(1)

Omit “Register of Offsets Projects” (wherever occurring), substitute “Emissions Reduction Fund Register”.

13 Section 240 (table item 21)

Omit “Register of Offsets Projects”, substitute “Emissions Reduction Fund Register”.

13A Section 297

After “this Act”, insert “(other than section 20D or 20E)”.

14 At the end of the Act

Add:

308 Legislative rules

The Minister may, by legislative instrument, make rules (*legislative rules*) prescribing matters:

- (a) required or permitted by this Act to be prescribed by the legislative rules; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Division 2—Transitional provisions

15 Transitional—Emissions Reduction Fund Register

- (1) The Register that was:
 - (a) kept under section 167 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; and
 - (b) known before the commencement of this item as the Register of Offsets Projects;continues in existence, after the commencement of this item, under the name Emissions Reduction Fund Register so that its identity is not affected.

Schedule 1 Amendments

Part 1 Purchase of eligible carbon credit units by the Commonwealth

- (2) In any of the following:
- (a) a law of the Commonwealth (other than this Part);
 - (b) an instrument made under a law of the Commonwealth;
 - (c) a contract or agreement;
 - (d) any pleading in, or process issued in connection with, any legal or other proceedings;
 - (e) any other instrument;

a reference to the Register of Offsets Projects must, except in relation to matters that occurred before the commencement of this item, be construed as a reference to the Emissions Reduction Fund Register.

Part 2—Other amendments

Division 1—Amendments

Australian National Registry of Emissions Units Act 2011

17 Section 38

Repeal the section.

18 Paragraph 39(2)(b)

Omit “account; or”, substitute “account.”.

19 Paragraph 39(2)(c)

Repeal the paragraph.

21 Subsections 41(4) and (5)

Repeal the subsections.

Carbon Credits (Carbon Farming Initiative) Act 2011

23 Section 4

Omit:

- A methodology determination must comply with the offsets integrity standards set out in this Act.

substitute:

- A methodology determination is made having regard to the offsets integrity standards set out in this Act.

24 Section 5

Insert:

100-year permanence period, in relation to an eligible offsets project, has the meaning given by section 87.

100-year permanence period project has the meaning given by paragraph 27(3)(e).

25-year permanence period project has the meaning given by paragraph 27(3)(f).

25 Section 5 (definitions of *additionality test* and *additionality test regulations*)

Repeal the definitions.

26 Section 5 (definition of *applicable carbon sequestration right*)

Omit “an offsets project”, substitute “a sequestration offsets project”.

27 Section 5

Insert:

area-based emissions avoidance project has the meaning given by section 53A.

area-based offsets project means an offsets project that is:

- (a) a sequestration offsets project; or
- (b) an area-based emissions avoidance project.

28 Section 5 (after paragraph (a) of the definition of *associated provisions*)

Insert:

- (aa) the provisions of the legislative rules;

29 Section 5 (at the end of paragraph (b) of the definition of *associated provisions*)

Add:

- ; or (iii) the legislative rules.

30 Section 5 (after paragraph (a) of the definition of *audit team leader*)

Insert:

- (aa) paragraph 13(1)(ea);
- (ab) paragraph 13(1)(eb);

31 Section 5 (after paragraph (c) of the definition of *audit team leader*)

Insert:

(ca) paragraph 76(4)(ca);

(cb) paragraph 76(4)(cb);

32 Section 5 (definition of *baseline*)

Repeal the definition.

33 Section 5 (definition of *Biodiversity Convention*)

Repeal the definition.

34 Section 5 (definition of *carbon dioxide equivalence*)

Repeal the definition.

35 Section 5

Insert:

carbon dioxide equivalent, of an amount of greenhouse gas, means the carbon dioxide equivalence (within the meaning of the *National Greenhouse and Energy Reporting Act 2007*) of the amount of the gas.

36 Section 5 (definition of *certified emission reduction*)

Repeal the definition.

37 Section 5 (definition of *commitment period*)

Repeal the definition.

37A Section 5

Insert:

Commonwealth place has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

38 Section 5 (definition of *crediting period*)

Repeal the definition, substitute:

crediting period, in relation to an eligible offsets project, means:

- (a) the crediting period for the project worked out under section 69 or 71; or
- (b) a crediting period for the project worked out under section 70.

Note: Sections 70 and 71 deal with transitional matters.

38A Section 5

Insert:

crediting period extension review has the meaning given by section 255A.

designated savanna project means a project to avoid the emission of methane or nitrous oxide from the burning of savannas.

39 Section 5 (definitions of *Domestic Offsets Integrity Committee* and *Domestic Offsets Integrity Committee member*)

Repeal the definitions.

40 Section 5

Insert:

eligible carbon abatement from an offsets project means carbon abatement that:

- (a) results from the carrying out of the project; and
- (b) is able to be used to meet Australia's climate change targets under:
 - (i) the Kyoto Protocol; or
 - (ii) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol.

For the purposes of the application of the definition of *Kyoto Protocol* to subparagraph (b)(i), if the Doha Amendment is not in force for Australia, the Doha Amendment is taken to be in force for Australia.

40A Section 5 (definition of *eligible interest*)

After “section”, insert “43”.

42 Section 5 (definitions of *eligible Kyoto project* and *eligible non-Kyoto project*)

Repeal the definitions.

43 Section 5 (definition of *eligible offsets project*)

Omit “paragraph 27(2)(a) or (b)”, substitute “subsection 27(2)”.

43A Section 5 (definition of *eligible voluntary action*)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

44 Section 5 (definition of *emission reduction unit*)

Repeal the definition.

45 Section 5

Insert:

Emissions Reduction Assurance Committee means the committee continued in existence by section 254.

Emissions Reduction Assurance Committee member means a member of the Emissions Reduction Assurance Committee, and includes the Chair of the Emissions Reduction Assurance Committee.

46 Section 5 (paragraph (h) of the definition of *entrusted public official*)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

47 Section 5 (paragraph (i) of the definition of *entrusted public official*)

Omit “Domestic Offsets Integrity Committee”, substitute “Emissions Reduction Assurance Committee”.

48 Section 5

Insert:

extended accounting period has the meaning given by section 7A.

fit and proper person test has the meaning given by section 60.

48A Section 5 (definition of *general law land*)

Repeal the definition.

49 Section 5 (definition of *Interim Domestic Offsets Integrity Committee*)

Repeal the definition.

50 Section 5 (definitions of *introduced animal* and *introduced animal emissions avoidance project*)

Repeal the definitions.

50A Section 5 (definition of *Kyoto Australian carbon credit unit*)

Repeal the definition, substitute:

Kyoto Australian carbon credit unit means:

- (a) an Australian carbon credit unit that:
 - (i) was issued in accordance with subsection 11(2) after the commencement of this definition; and
 - (ii) is, or is to be, identified as a Kyoto Australian carbon credit unit within the Registry; or
- (b) an Australian carbon credit unit that:
 - (i) was issued before the commencement of this definition; and
 - (ii) was a Kyoto Australian carbon credit unit (within the meaning of this Act as it stood before the commencement of this definition).

51 Section 5 (definition of *Kyoto offsets project*)

Repeal the definition.

51A Section 5 (definition of *Kyoto unit*)

Repeal the definition.

51B Section 5 (definition of *land rights holder*)

Repeal the definition.

52 Section 5 (definition of *long-term certified emission reduction*)

Repeal the definition.

53 Section 5 (definition of *maximum potential relinquishment period*)

Repeal the definition.

54 Section 5 (definition of *National Inventory Report*)

Repeal the definition.

55 Section 5 (definitions of *native forest* and *native forest protection project*)

Repeal the definitions.

55A Section 5

Insert:

no double counting test has the meaning given by section 15A.

56 Section 5 (definition of *non-Kyoto offsets project*)

Repeal the definition.

57 Section 5

Insert:

permanence period, in relation to an eligible offsets project, has the meaning given by section 86A.

58 Section 5 (definition of *prescribed native forest protection project*)

Repeal the definition.

59 Section 5 (definition of *prescribed non-CFI offsets scheme*)

Repeal the definition.

60 Section 5 (definition of *project area*)

Omit “an offsets project”, substitute “an area-based offsets project”.

60A Section 5 (definition of *project proponent*)

Repeal the definition, substitute:

project proponent, in relation to an offsets project, means the person who:

- (a) is responsible for carrying out the project; and
- (b) has the legal right to carry out the project.

Note 1: See also section 46 (registered native title bodies corporate).

Note 2: See also section 135 (multiple project proponents).

61 Section 5 (definition of *protected DOIC information*)

Repeal the definition.

62 Section 5

Insert:

protected ERAC information means protected information that was obtained by a person in the person’s capacity as:

- (a) an Emissions Reduction Assurance Committee member; or
- (b) a person assisting the Emissions Reduction Assurance Committee under section 269.

63 Section 5 (definitions of *recognised and recognised offsets entity*)

Repeal the definitions.

64 Section 5 (definition of *regional natural resource management organisation*)

Repeal the definition.

66 Section 5 (paragraph (a) of the definition of *relevant land registration official*)

Omit “a project”, substitute “an area-based offsets project”.

67 Section 5 (definition of *removal unit*)

Repeal the definition.

68 Section 5 (definition of *temporary certified emission reduction*)

Repeal the definition.

68A Section 5 (definition of *transfer*)

Repeal the definition, substitute:

transfer, in relation to an Australian carbon credit unit, has the meaning given by section 151.

69 Section 5

Insert:

United Nations Convention on the Law of the Sea means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

Note: The Convention is in Australian Treaty Series 1994 No. 31 ([1994] ATS 31) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

70 Section 5 (definition of *vacancy*)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

71 Section 5 (definition of *voluntary automatic unit cancellation regime*)

Repeal the definition.

72 Section 6 (heading)

Repeal the heading, substitute:

6 Vacancy in the office of an Emissions Reduction Assurance Committee member

73 Paragraph 6(a)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

74 Section 6

Omit “the Domestic Offsets Integrity Committee” (wherever occurring), substitute “the Emissions Reduction Assurance Committee”.

74A After section 7

Insert:

7A Extended accounting period

- (1) For the purposes of this Act, if an eligible offsets project is an emissions avoidance offsets project of a kind specified in the legislative rules, the *extended accounting period* for the project is the period:
 - (a) beginning immediately after the end of the crediting period, or the last of the crediting periods, for the project; and
 - (b) ending at a time ascertained in accordance with the legislative rules.
- (2) Subsection (1) does not, by implication, affect the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.

75 At the end of Part 1

Add:

9A Extension to exclusive economic zone and continental shelf

- (1) This Act extends to a matter relating to the exercise of Australia’s sovereign rights in the exclusive economic zone or the continental shelf.
- (2) For the purposes of subsection (1), a reference in paragraph 27(4)(a) to Australia is to be read as if it included a reference to the exclusive economic zone and the continental shelf.

9B Application to foreign ships

This Act does not apply to the extent that its application would be inconsistent with the exercise of rights of foreign ships in:

- (a) the territorial sea; or
- (b) the exclusive economic zone; or
- (c) waters of the continental shelf;

in accordance with the United Nations Convention on the Law of the Sea.

76 Section 10

Omit:

- The number of Australian carbon credit units issued will be worked out by reference to:
 - (a) the relevant abatement amount calculated under the applicable methodology determination; or
 - (b) if the project is a native forest protection project—the relevant sequestration amount calculated under the applicable methodology determination.
- For sequestration offsets projects, a risk of reversal buffer applies.

substitute:

- The number of Australian carbon credit units issued will be worked out by reference to the relevant abatement amount calculated under the applicable methodology determination.
- For sequestration offsets projects, a risk of reversal buffer and permanence period discount apply.

77 Subsections 11(2), (3) and (4)

Repeal the subsections, substitute:

Issue of units

- (2) If the project has resulted in eligible carbon abatement, the Regulator must, as soon as practicable after the day on which the

certificate was issued, issue to the holder of the certificate a number of Kyoto Australian carbon credit units equal to the number specified in the certificate as the unit entitlement for that certificate.

- (3) If the project has not resulted in eligible carbon abatement, the Regulator must, as soon as practicable after the day on which the certificate was issued, issue to the holder of the certificate a number of non-Kyoto Australian carbon credit units equal to the number specified in the certificate as the unit entitlement for that certificate.

78 Subsections 11(5) and (6)

Omit “, (3) or (4)”, substitute “or (3)”.

79 Paragraph 13(1)(e)

Repeal the paragraph, substitute:

- (e) if, under the legislative rules, the application is subject to audit under this Act—be accompanied by an audit report that is:
- (i) prescribed by the legislative rules; and
 - (ii) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
- (ea) if:
- (i) under the legislative rules, a set of 2 or more applications made by the applicant is subject to audit under this Act; and
 - (ii) the application is included in that set;
- be accompanied by an audit report that is:
- (iii) prescribed by the legislative rules; and
 - (iv) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
- (eb) if, before the application was given to the Regulator, the Regulator gave the applicant a written notice stating that the application would be subject to audit under this Act—be accompanied by an audit report that is:
- (i) prescribed by the legislative rules; and

- (ii) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
- (ec) if a notice under section 77A is relevant to the application—be accompanied by a copy of that notice; and

80 Subsections 13(2) and (3)

Repeal the subsections, substitute:

- (2) The Regulator must not give a notice under paragraph (1)(eb) unless the Regulator is satisfied that it is appropriate to do so, having regard to effective risk management.

81 Paragraph 15(2)(a)

Omit “is a recognised offsets entity”, substitute “passes the fit and proper person test”.

82 Paragraph 15(2)(c)

Before “the reporting period”, insert “if the project does not have an extended accounting period—”.

83 Paragraph 15(2)(d)

Repeal the paragraph, substitute:

- (ca) if the project has an extended accounting period—the reporting period is included in:
 - (i) a crediting period for the project; or
 - (ii) the extended accounting period; and
- (d) the application passes the no double counting test; and

83A After paragraph 15(2)(e)

Insert:

- (ea) if the relevant section 27 declaration is subject to a condition mentioned in subsection 28A(2)—that condition has been met; and

84 Subsection 15(2) (note)

Repeal the note, substitute:

- Note 1: For the fit and proper person test, see section 60.
- Note 2: For the no double counting test, see section 15A.

85 Subsection 15(3) (note)

Omit “, 17”.

85A After section 15

Insert:

15A No double counting test

For the purposes of this Act, an application under section 12 passes the *no double counting test* if, assuming that a certificate of entitlement were to be issued in respect of the relevant eligible offsets project as a result of the application, none of the carbon abatement that would be reflected in the unit entitlement for the certificate has been reflected in:

- (a) the unit entitlement for another certificate of entitlement issued in respect of the project; or
- (b) the unit entitlement for a certificate of entitlement issued in respect of another eligible offsets project.

Note: For unit entitlement, see section 16 or 18.

86 Section 16 (heading)

Repeal the heading, substitute:

16 Unit entitlement—sequestration offsets projects

87 Subsection 16(1)

Omit “other than a native forest protection project”.

88 Subsection 16(2) (formula)

Repeal the formula, substitute:

$$\frac{\text{Net abatement number}}{\text{Risk of reversal buffer number}} - \frac{\text{Permanence period discount number}}$$

89 Subsection 16(2)

Insert:

permanence period discount number means:

- (a) if the project is a 100-year permanence period project—zero;
- or

- (b) if the project is a 25-year permanence period project and paragraph (c) does not apply—20% of the net abatement number; or
- (c) if:
 - (i) the project is a 25-year permanence period project; and
 - (ii) at the start of the crediting period in which the reporting period is included, another percentage is specified in the legislative rules in relation to a particular kind of project; and
 - (iii) the project is of that kind;that other percentage of the net abatement number.

90 Subsection 16(2) (subparagraph (b)(i) of the definition of *risk of reversal buffer number*)

Omit “the regulations”, substitute “the legislative rules”.

91 Subsection 16(2A)

Repeal the subsection.

92 Section 17

Repeal the section.

93 Subsection 18(3)

Repeal the subsection.

94 Section 19

Repeal the section.

94A Subsection 22(1)

Omit “(1)”.

94B Subsection 22(2)

Repeal the subsection.

95 Paragraph 23(1)(e)

Repeal the paragraph.

96 Paragraph 23(1)(g)

Repeal the paragraph, substitute:

- (g) if the project is a sequestration offsets project—include either:
 - (i) a request that the project be treated as a 100-year permanence period project; or
 - (ii) a request that the project be treated as a 25-year permanence period project; and

96A Before paragraph 23(1)(h)

Insert:

- (ga) if:
 - (i) the project is an area-based offsets project; and
 - (ii) the project area, or any of the project areas, for the project is covered by a regional natural resource management plan;be accompanied by a statement about whether the project is consistent with the plan; and

97 Subsection 23(4)

Repeal the subsection.

98 Subsection 26(1) (note)

Repeal the note.

99 Subsection 27(2)

Repeal the subsection, substitute:

Declaration

- (2) After considering the application, the Regulator may, by writing, declare that the offsets project is an *eligible offsets project* for the purposes of this Act.

100 Paragraph 27(3)(b)

Before “identify”, insert “if the project is an area-based offsets project—”.

101 After paragraph 27(3)(c)

Insert:

- (ca) identify the applicable methodology determination for the project; and
- (cb) identify the crediting period or periods for the project; and

102 Paragraph 27(3)(e)

Repeal the paragraph, substitute:

- (e) if:
 - (i) the project is a sequestration offsets project; and
 - (ii) the application included a request that the project be treated as a 100-year permanence period project;declare that the project is a *100-year permanence period project*; and
- (f) if:
 - (i) the project is a sequestration offsets project; and
 - (ii) the application included a request that the project be treated as a 25-year permanence period project;declare that the project is a *25-year permanence period project*.

103 Paragraph 27(4)(d)

Repeal the paragraph, substitute:

- (d) the project meets the additionality requirements set out in subsection (4A) of this section; and

104 Paragraph 27(4)(f)

Omit “is a recognised offsets entity”, substitute “passes the fit and proper person test”.

105 Paragraphs 27(4)(h), (i), (j) and (k)

Repeal the paragraphs.

106 Subsection 27(4) (note 2)

Repeal the note, substitute:

Note 2: For the fit and proper person test, see section 60.

107 After subsection 27(4)

Insert:

(4A) The additionality requirements mentioned in paragraph (4)(d) are:

(a) either:

- (i) the requirement (the ***newness requirement***) that the project has not begun to be implemented; or
- (ii) if the methodology determination that covers the project specifies, for the purposes of this subparagraph, one or more requirements that are expressed to be in lieu of the newness requirement—those requirements; and

(b) either:

- (i) the requirement (the ***regulatory additionality requirement***) that the project is not required to be carried out by or under a law of the Commonwealth, a State or a Territory; or
- (ii) if the methodology determination that covers the project specifies, for the purposes of this subparagraph, one or more requirements that are expressed to be in lieu of the regulatory additionality requirement—those requirements; and

(c) either:

- (i) the requirement (the ***government program requirement***) that the project would be unlikely to be carried out under another Commonwealth, State or Territory government program or scheme in the absence of a declaration of the project as an eligible offsets project; or
- (ii) if the legislative rules specify, for the purposes of this subparagraph, one or more requirements that are expressed to be in lieu of the government program requirement—those requirements.

(4B) For the purposes of subparagraph (4A)(a)(i), in determining whether the project has begun to be implemented, disregard any of the following activities that have been, or are being, undertaken in relation to the project:

- (a) conducting a feasibility study for the project;
- (b) planning or designing the project;
- (c) obtaining regulatory approvals for the project;

- (d) obtaining consents relating to the project;
 - (e) obtaining advice relating to the project;
 - (f) conducting negotiations relating to the project;
 - (g) sampling to establish a baseline for the project;
 - (h) an activity specified in the legislative rules;
 - (i) an activity that is ancillary or incidental to any of the above activities.
- (4C) For the purposes of subparagraph (4A)(a)(i), the following are examples of when a project has begun to be implemented:
- (a) making a final investment decision in relation to the project;
 - (b) acquiring or leasing a tangible asset (other than land) that is for use wholly or mainly for the purposes of the project;
 - (c) commencing construction work for the purposes of the project;
 - (d) in the case of a sequestration offsets project—preparing soil for seeding or planting that is for the purposes of the project;
 - (e) in the case of a sequestration offsets project—seeding, planting or fertilising plants that are for the purposes of the project;
 - (f) in the case of a sequestration offsets project—installing an irrigation or drainage system for the purposes of the project.
- (4D) For the purposes of paragraph (4C)(a), *final investment decision* has the meaning generally accepted within the corporate finance community.
- (4E) For the purposes of paragraph (4C)(b), disregard an asset that is a minor asset.

108 Subsections 27(6), (7), (8) and (9)

Repeal the subsections.

109 Subsection 27(10)

Repeal the subsection, substitute:

- (10) The Regulator must not make a declaration under subsection (2) if:
- (a) the project is an area-based offsets project; and
 - (b) the project area is, or any of the project areas are, to any extent subject to a carbon maintenance obligation.

110 After paragraph 27(11)(a)

Insert:

- (aa) the new project is an area-based offsets project; and

111 Subsections 27(12) and (13)

Repeal the subsections.

112 Paragraph 27(14)(b)

Repeal the paragraph.

113 Subsections 27(15) and (16)

Repeal the subsections, substitute:

When a declaration takes effect

- (15) A declaration under subsection (2) takes effect when it is made.

114 Subsection 27(19)

Repeal the subsection.

114A After section 27

Insert:

27A Suspension of processing of applications for declarations of eligible offsets projects

Order

- (1) The Emissions Reduction Assurance Committee may, by legislative instrument, order that, if:
 - (a) an application is made under section 22 during a specified period; and
 - (b) the application relates to an offsets project that is covered by a specified methodology determination;the Regulator must not:
 - (c) consider the application during that period; or
 - (d) make a decision on the application during that period.
- (2) A period specified in an order under subsection (1):

- (a) must start at the commencement of the order; and
 - (b) must not be longer than 12 months.
- (3) The Emissions Reduction Assurance Committee must not make an order under subsection (1) that relates to a methodology determination unless the Committee is satisfied that there is reasonable evidence that the methodology determination does not comply with one or more of the offsets integrity standards.
- (4) Before making an order under subsection (1), the Emissions Reduction Assurance Committee must inform the Minister of the Committee's proposal to make the order.

Compliance with order

- (5) The Regulator must comply with an order under subsection (1).

Timing of decision on application

- (6) If an application made under section 22 is or was covered by an order under subsection (1) of this section, subsection 27(14) does not apply to the application.

Note: Subsection 27(14) deals with the timing of decisions on applications.

115 At the end of Division 2 of Part 3

Add:

28A Declaration may be subject to condition about obtaining consents from eligible interest holders

Scope

- (1) This section applies if:
- (a) an application under section 22 has been made for a declaration of an offsets project as an eligible offsets project; and
 - (b) the Regulator makes a declaration under section 27 in relation to the project; and
 - (c) the Regulator is satisfied that there are one or more persons (the *relevant interest-holders*) who:

- (i) hold an eligible interest in the project area, or any of the project areas, for the project; and
- (ii) have not consented, in writing, to the making of the application.

Condition

- (2) The Regulator must specify in the declaration that the declaration is subject to the condition that the written consent of each relevant interest-holder to the existence of the declaration must be obtained before the end of the first reporting period for the project.

Consents

- (3) A consent mentioned in subparagraph (1)(c)(ii) or subsection (2) must be in a form approved, in writing, by the Regulator.
- (4) A consent mentioned in subparagraph (1)(c)(ii) or subsection (2) may be set out in a registered indigenous land use agreement.
- (5) Subsection (3) does not apply to a consent mentioned in subparagraph (1)(c)(ii) or subsection (2) if the consent is set out in a registered indigenous land use agreement.

Registered indigenous land use agreements

- (6) If:
 - (a) the declaration is in force; and
 - (b) a consent mentioned in subparagraph (1)(c)(ii) or subsection (2) of this section was set out in a registered indigenous land use agreement;details of the agreement must not be removed from the Register of Indigenous Land Use Agreements under subparagraph 199C(1)(c)(ii) of the *Native Title Act 1993* without the written consent of the Regulator.

116 Subsection 29(1)

Omit “an offsets project”, substitute “an area-based offsets project”.

117 Paragraph 29(3)(h)

Repeal the paragraph.

118 Subsection 29(9)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

119 Subsection 30(10)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

119A Section 31 (heading)

Repeal the heading, substitute:

31 Voluntary variation of conditional declaration of eligible offsets project—condition of declaration has been met

119B Subsection 31(1)

Omit “that all regulatory approvals must be obtained for the project before the end of the first reporting period for the project”, substitute “mentioned in subsection 28(2) or 28A(2)”.

120 Subsection 31(9)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

121 At the end of Division 3 of Part 3

Add:

31A No variation of declaration of eligible offsets project as a 100-year or 25-year permanence period project

Scope

- (1) This section applies to a declaration under section 27 in relation to an offsets project if the declaration:
 - (a) declares that the project is a 100-year permanence period project; or
 - (b) declares that the project is a 25-year permanence period project.

Regulator must not vary permanence period

- (2) The Regulator must not:
- (a) if paragraph (1)(a) applies—vary the declaration to declare that the project is a 25-year permanence period project; or
 - (b) if paragraph (1)(b) applies—vary the declaration to declare that the project is a 100-year permanence period project.

122 Paragraphs 32(2)(c) and (d)

Repeal the paragraphs, substitute:

- (c) if the project is a sequestration offsets project:
 - (i) before the application was made, the applicant voluntarily relinquished a number of Australian carbon credit units in order to satisfy a condition for the revocation of the declaration; and
 - (ii) the number of relinquished units equals the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.

123 Subsection 32(2) (notes 1 and 2)

Repeal the notes.

123A Section 34 (heading)

Repeal the heading, substitute:

**34 Unilateral revocation of declaration of eligible offsets project—
condition of declaration has not been met**

123B Paragraph 34(2)(a)

Repeal the paragraph, substitute:

- (a) the declaration is subject to a condition mentioned in subsection 28(2) or 28A(2); and

124 Section 36 (heading)

Repeal the heading, substitute:

**36 Unilateral revocation of declaration of eligible offsets project—
project proponent ceases to pass the fit and proper person
test**

125 Paragraph 36(2)(a)

Omit “to be a recognised offsets entity”, substitute “to pass the fit and proper person test”.

126 Paragraph 36(2)(b)

Omit “is not a recognised offsets entity”, substitute “does not pass the fit and proper person test”.

127 At the end of subsection 36(2)

Add:

Note: For the fit and proper person test, see section 60.

128 Subparagraph 37(2)(b)(ii)

Repeal the subparagraph substitute:

(ii) a person who passes the fit and proper person test.

129 At the end of subsection 37(2)

Add:

Note: For the fit and proper person test, see section 60.

130 Division 6 of Part 3

Repeal the Division.

130A Division 8 of Part 3 (heading)

Repeal the heading, substitute:

Division 8—Eligible interest in an area of land

130B Section 43 (heading)

Repeal the heading, substitute:

43 Eligible interest in an area of land—applicable carbon sequestration right

130C Before subsection 43(1)

Insert:

Eligible interest

(1A) For the purposes of this Act, if a person holds the applicable carbon sequestration right in relation to a project area of a sequestration offsets project, the applicable carbon sequestration right is an *eligible interest* held by the person in the project area.

130D Subsection 43(7)

Omit “this Act”, substitute “the application of this Act to a sequestration offsets project”.

130E Before paragraph 43(7)(a)

Insert:

(aa) an area of land is a project area for the project; and

130F Paragraph 43(7)(a)

Omit “an”, substitute “the”.

131 Subsection 43(7)

Before “*carbon sequestration right*”, insert “*applicable*”.

131AA Subsection 43(7)

Omit “the land”, substitute “the project area”.

131A Division 9 of Part 3 (heading)

Repeal the heading.

132 Subsection 46(1)

Omit “an offsets project”, substitute “an area-based offsets project”.

133 Paragraph 46(1)(f)

Omit “project; and”, substitute “project.”.

134 Paragraph 46(1)(g)

Repeal the paragraph.

135 Subsection 46(1) (note)

Repeal the note.

136 Subsection 46(2)

Omit “an offsets project”, substitute “an area-based offsets project”.

137 Paragraph 46(2)(g)

Omit “project; and”, substitute “project.”.

138 Paragraph 46(2)(h)

Repeal the paragraph.

139 Subsection 46(2) (note)

Repeal the note.

140 Paragraph 47(1)(a)

Omit “an offsets project”, substitute “an area-based offsets project”.

141 At the end of subsection 50(1)

Add “, so long as the project is an area-based offsets project”.

142 Paragraph 52(1)(a)

Omit “an offsets project”, substitute “an area-based offsets project”.

143 Paragraphs 53(1)(c) and (d)

Repeal the paragraphs, substitute:

(c) any other project to avoid emissions of greenhouse gases.

144 Subsection 53(2)

Repeal the subsection, substitute:

(2) Paragraphs (1)(a) and (b) do not limit paragraph (1)(c).

145 After section 53

Insert:

53A Area-based emissions avoidance projects

- (1) For the purposes of this Act, an emissions avoidance offsets project is an *area-based emissions avoidance project* if it is a project of a kind specified in the legislative rules.
- (2) Subsection (1) does not, by implication, affect the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.

146 Section 55

Repeal the section.

146A Paragraph 56(2)(e)

Omit “production;”, substitute “production.”.

146B Subsection 56(2)

Omit “in, or in the vicinity of, the project area, or any of the project areas, for that kind of project.”.

147 Paragraph 57(1)(a)

Repeal the paragraph, substitute:

- (a) as the result of the variation or revocation of a section 27 declaration, an area of land (the *relevant area*) ceases to be, or ceases to be part of, the project area, or any of the project areas, for an eligible offsets project that is a sequestration offsets project; and

148 Paragraph 57(1)(b)

Repeal the paragraph, substitute:

- (b) as a result of the making or variation of another section 27 declaration, the relevant area becomes, or becomes part of, the project area, or any of the project areas, for another eligible offsets project that is a sequestration offsets project;

149A Subsection 57(8)

After “purposes”, insert “of”.

150 Section 58

Repeal the section.

151 Part 4

Repeal the Part, substitute:

Part 4—Fit and proper person test

59 Simplified outline of this Part

- A person passes the fit and proper person test if:
 - (a) the person is a fit and proper person; and
 - (b) the person is not an insolvent under administration; and
 - (c) the person is not an externally-administered body corporate.

60 Fit and proper person test

Individual

- (1) For the purposes of this Act, an individual passes the ***fit and proper person test*** if:
 - (a) the individual is a fit and proper person, having regard to:
 - (i) whether any of the events specified in the legislative rules have happened in relation to the individual; and
 - (ii) such other matters (if any) as are specified in the legislative rules; and
 - (b) the individual is not an insolvent under administration.

Body corporate

- (2) For the purposes of this Act, a body corporate passes the ***fit and proper person test*** if:
 - (a) the body corporate is a fit and proper person, having regard to:
 - (i) whether any of the events specified in the legislative rules have happened in relation to the body corporate; and
 - (ii) whether any of the events specified in the legislative rules have happened in relation to an executive officer of the body corporate; and

- (iii) such other matters (if any) as are specified in the legislative rules; and
- (b) the body corporate is not an externally-administered body corporate.

Spent convictions

- (3) Legislative rules made for the purposes of subparagraph (1)(a)(i) or (ii) or (2)(a)(i), (ii) or (iii) must not affect the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

152 Part 5

Repeal the Part, substitute:

Part 5—Crediting period

68 Simplified outline of this Part

- Generally, the crediting period for an eligible offsets project is:
 - (a) 25 years for a sequestration offsets project; or
 - (b) 7 years for an emissions avoidance offsets project.
- However, the applicable methodology determination for the project may specify a different crediting period.
- An eligible offsets project cannot have more than one crediting period.
- However, transitional rules apply if a project was an eligible offsets project immediately before the commencement of this Part.

Note: Under section 15, the general rule is that the Regulator may only issue a certificate of entitlement to Australian carbon credit units in relation to a reporting period for an eligible offsets project if the reporting period is included in a crediting period for the project.

69 Crediting period—basic rule

Scope

- (1) This section applies to an eligible offsets project if the project became an eligible offsets project after the commencement of this Part.

Sequestration offsets project or designated savanna project

- (2) If the project is a sequestration offsets project or a designated savanna project, then, for the purposes of this Act, the **crediting period** for the project is:
 - (a) the period of 25 years; or
 - (b) if another period is specified in the applicable methodology determination for the project—that other period;that began at the start time worked out under subsection (4).

Emissions avoidance offsets project

- (3) If the project is an emissions avoidance offsets project (other than a designated savanna project), then, for the purposes of this Act, the **crediting period** for the project is:
 - (a) the period of 7 years; or
 - (b) if another period is specified in the applicable methodology determination for the project—that other period;that began at the start time worked out under subsection (4).

Start time

- (4) For the purposes of this section, the **start time** is:
 - (a) if:
 - (i) the application for the declaration of the project under section 27 included a statement to the effect that the crediting period for the project should begin at a specified time; and
 - (ii) the specified time occurs after the declaration takes effect; and
 - (iii) the specified time complies with subsection (5); and
 - (iv) the specified time was not varied under paragraph (b);the specified time; or

- (b) if:
 - (i) the application for the declaration of the project under section 27 included a statement to the effect that the crediting period for the project should begin at a specified time; and
 - (ii) after the project became an eligible offsets project, the project proponent, by written notice given to the Regulator, varied the specified time; and
 - (iii) the varied time complies with subsection (5); and
 - (iv) the project proponent has not previously varied the specified time; and
 - (v) the notice was given at or before the time when the offsets report for the project was given under subsection 76(1);the varied time; or
- (c) otherwise—the time when the declaration of the project under section 27 took effect.

Limit on deferral of start of crediting period

- (5) A time complies with this subsection if:
 - (a) the time is not later than 18 months after the declaration of the project under section 27 took effect; or
 - (b) if:
 - (i) another number of months is specified in the legislative rules in relation to a particular kind of project; and
 - (ii) the project is of that kind;the time is not later than that other number of months after the declaration of the project under section 27 took effect.

No subsequent crediting periods

- (6) The project cannot have more than one crediting period.

Other matters

- (7) A notice under subparagraph (4)(b)(ii) may be included in the offsets report for the project given under subsection 76(1).

- (8) Paragraph (5)(b) does not, by implication, affect the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.

70 Crediting period—general transitional rule

Scope

- (1) This section applies to an eligible offsets project if:
- (a) the project was an eligible offsets project immediately before the commencement of this Part; and
 - (b) the project is not covered by the *Carbon Credits (Carbon Farming Initiative) (Avoided Deforestation) Methodology Determination 2013*.

Project has 2 crediting periods

- (2) If the project is a sequestration offsets project, then, for the purposes of this Act, the project has 2 crediting periods, as follows:
- (a) the first crediting period for the project is the period:
 - (i) beginning when the declaration of the project under section 27 took effect; and
 - (ii) ending immediately before the commencement of this Part;
 - (b) the second crediting period for the project is:
 - (i) the period of 25 years; or
 - (ii) if another period is specified in the applicable methodology determination for the project—that other period;that began at the commencement of this Part.
- (3) If:
- (a) the project is an emissions avoidance offsets project; and
 - (b) the project is not a designated savanna project;
- then, for the purposes of this Act, the project has 2 crediting periods, as follows:
- (c) the first crediting period for the project is the period:
 - (i) beginning when the declaration of the project under section 27 took effect; and

- (ii) ending immediately before the commencement of this Part;
 - (d) the second crediting period for the project is:
 - (i) the period of 7 years; or
 - (ii) if another period is specified in the applicable methodology determination for the project—that other period;that began at the commencement of this Part.
- (4) If:
- (a) the project is an emissions avoidance offsets project; and
 - (b) the project is a designated savanna project;
- then, for the purposes of this Act, the project has 2 crediting periods, as follows:
- (c) the first crediting period for the project is the period:
 - (i) beginning when the declaration of the project under section 27 took effect; and
 - (ii) ending immediately before 1 January next following the commencement of this Part;
 - (d) the second crediting period for the project is:
 - (i) the period of 25 years; or
 - (ii) if another period is specified in the applicable methodology determination for the project—that other period;that began at the start of 1 January next following the commencement of this Part.

No subsequent crediting periods

- (5) The project cannot have more than 2 crediting periods.

71 Crediting period—transitional rule for avoided deforestation projects

Scope

- (1) This section applies to an eligible offsets project if:
 - (a) either:
 - (i) the project was an eligible offsets project immediately before the commencement of this Part; or
-

- (ii) the project became an eligible offsets project after the commencement of this Part as the result of an ERF transitional application (within the meaning of Division 2 of Part 2 of Schedule 1 to the *Carbon Farming Initiative Amendment Act 2014*); and
- (b) the project is covered by the *Carbon Credits (Carbon Farming Initiative) (Avoided Deforestation) Methodology Determination 2013*.

Crediting period

- (2) Despite any other provision of this Part, the crediting period for the project is:
 - (a) the first crediting period for the project worked out under section 69 as it stood immediately before the commencement of this Part; or
 - (b) if another period is specified in the applicable methodology determination for the project—that other period that began when the declaration of the project under section 27 took effect.

No subsequent crediting periods

- (3) The project cannot have more than one crediting period.

153 Section 75

Omit:

- The first reporting period must begin when the declaration of the project under section 27 took effect.
- Each subsequent reporting period must begin immediately after the end of the previous reporting period.
- A reporting period must not be:
 - (a) shorter than 12 months; or
 - (b) longer than 5 years.

substitute:

- The first reporting period must begin at the start of the crediting period for the project.
- Each subsequent reporting period must begin immediately after the end of the previous reporting period.
- A reporting period for a sequestration offsets project must not be:
 - (a) shorter than 6 months (or such lesser number of months as is specified in the legislative rules); or
 - (b) longer than 5 years.
- A reporting period for an emissions avoidance offsets project must not be:
 - (a) shorter than 6 months (or such lesser number of months as is specified in the legislative rules); or
 - (b) longer than 2 years.

154 Paragraphs 76(1)(b), (c) and (d)

Repeal the paragraphs, substitute:

- (b) begins:
 - (i) if the project has a single crediting period—at the start of that crediting period; or
 - (ii) if the project has 2 crediting periods—at the start of the first crediting period; and
- (c) is not shorter than:
 - (i) 6 months; or
 - (ii) if, under the legislative rules, a specified lesser number of months is the minimum number of months applicable to the report—that specified lesser number of months; and
- (d) if the project is a sequestration offsets project—is not longer than 5 years; and
- (e) if the project is an emissions avoidance offsets project—is not longer than 2 years.

155 Subsection 76(1) (note)

After “section 15,”, insert “the general rule is that”.

156 Paragraphs 76(2)(c) and (d)

Repeal the paragraphs, substitute:

- (c) is not shorter than:
 - (i) 6 months; or
 - (ii) if, under the legislative rules, a specified lesser number of months is the minimum number of months applicable to the report—that specified lesser number of months; and
- (d) if the project is a sequestration offsets project—is not longer than 5 years; and
- (e) if the project is an emissions avoidance offsets project—is not longer than 2 years; and
- (f) if the project is an emissions avoidance offsets project—is included in:
 - (i) a crediting period for the project; or
 - (ii) the extended accounting period (if any) for the project.

157 Subsection 76(2) (note 1)

After “section 15,”, insert “the general rule is that”.

158 Paragraph 76(4)(c)

Repeal the paragraph, substitute:

- (c) if, under the legislative rules, the offsets report is subject to audit under this Act—be accompanied by an audit report that is:
 - (i) prescribed by the legislative rules; and
 - (ii) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
- (ca) if:
 - (i) under the legislative rules, a set of 2 or more offsets reports given by the project proponent is subject to audit under this Act; and
 - (ii) the offsets report is included in that set; be accompanied by an audit report that is:
 - (iii) prescribed by the legislative rules; and

- (iv) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
- (cb) if, before the offsets report was given to the Regulator, the Regulator gave the project proponent a written notice stating that the offsets report would be subject to audit under this Act—be accompanied by an audit report that is:
 - (i) prescribed by the legislative rules; and
 - (ii) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
- (cc) if a notice under section 77A is relevant to the offsets report—be accompanied by a copy of that notice; and

158A Paragraph 76(4)(e)

Repeal the paragraph, substitute:

- (e) be given to the Regulator within:
 - (i) 6 months after the end of the reporting period; or
 - (ii) if a greater number of months is specified in the applicable methodology determination for the project—that greater number of months after the end of the reporting period.

159 Subsections 76(5) and (6)

Repeal the subsections, substitute:

- (5) The Regulator must not give a notice under paragraph (4)(cb) unless the Regulator is satisfied that it is appropriate to do so, having regard to effective risk management.
- (6) To avoid doubt, an offsets report for a period may deal with matters that occur before the start of that period.

159A At the end of Division 2 of Part 6

Add:

77A Offsets report may be about a part of a project etc.

Notice dividing the overall project into 2 or more parts

- (1) The project proponent for an eligible offsets project (the **overall project**) may, by written notice given to the Regulator, choose to:
 - (a) divide the overall project into 2 or more specified parts, for the purposes of the application of this section to a specified period that ends after the notice is given; and
 - (b) give the Regulator:
 - (i) offsets reports; and
 - (ii) applications for certificates of entitlement;for that period as if each of those parts were an eligible offsets project in its own right.
- (2) The division of the overall project must comply with such requirements (if any) as are set out in the applicable methodology determination for the overall project.

Consequences of notice

- (3) If a notice has been given under subsection (1):
 - (a) this Division has effect, in relation to an offsets report for the period specified in the notice, as if:
 - (i) each such part of the overall project was an eligible offsets project in its own right; and
 - (ii) the project proponent for each such part of the overall project was the project proponent for the overall project; and
 - (iii) each such part of the overall project was the subject of a section 27 declaration that took effect when the section 27 declaration of the overall project took effect; and
 - (iv) this Division did not require the giving of an offsets report for the whole of the overall project; and
 - (b) Part 2 has effect, in relation to:
 - (i) a certificate of entitlement; and
 - (ii) an application for a certificate of entitlement;for the period specified in the notice, as if:

- (iii) each such part of the overall project was an eligible offsets project in its own right; and
 - (iv) the project proponent for each such part of the overall project was the project proponent for the overall project; and
 - (v) a crediting period for each such part of the overall project was a crediting period for the overall project; and
 - (vi) each such part of the overall project was the subject of a section 27 declaration that took effect when the section 27 declaration of the overall project took effect, and that is subject to the same conditions (if any) as the section 27 declaration of the overall project; and
 - (vii) Part 2 prohibited the making of such an application for a certificate of entitlement in respect of the whole of the overall project; and
- (c) for the purposes of this Act, treat Australian carbon credit units issued in relation to such a part of the overall project in accordance with Part 2 as if they had been issued in relation to the overall project in accordance with that Part.

159B Subdivision A of Division 3 of Part 6 (heading)

Repeal the heading.

160 Subsection 82(5) (second occurring)

Omit “(5) Subsections”, substitute “(6) Subsections”.

161A After paragraph 83(1)(a)

Insert:

- (aa) the project is an area-based offsets project; and

162 Subdivision B of Division 3 of Part 6 (heading)

Repeal the heading.

163 Section 84 (heading)

Repeal the heading, substitute:

84 Notification requirement—event relevant to whether a project proponent is a fit and proper person

164 Paragraph 84(1)(a)

Omit “a recognised offsets entity”, substitute “a project proponent for an eligible offsets project”.

164A Paragraph 84(1)(b)

Repeal the paragraph, substitute:

- (b) in a case where the person is an individual:
 - (i) an event set out in legislative rules made for the purposes of subparagraph 60(1)(a)(i) happens in relation to the individual; or
 - (ii) the individual becomes an insolvent under administration; and
- (c) in a case where the person is a body corporate:
 - (i) an event set out in legislative rules made for the purposes of subparagraph 60(2)(a)(i) happens in relation to the body corporate; or
 - (ii) the body corporate becomes an externally-administered body corporate; or
 - (iii) an event set out in legislative rules made for the purposes of subparagraph 60(2)(a)(ii) happens in relation to an executive officer of the body corporate.

For the purposes of subparagraphs (b)(i) and (c)(i) and (iii), disregard an event that consists of a breach of a climate change law (within the meaning of the *Clean Energy Regulator Act 2011*).

164B Subdivision C of Division 3 of Part 6 (heading)

Repeal the heading.

165 Subsection 85(1)

Repeal the subsection, substitute:

Scope

- (1) This section applies if a person is the project proponent for an eligible offsets project.

166 Subsection 85(3)

Omit “or different recognised offsets entities”.

167 After section 86

Insert:

86A Permanence period

For the purposes of this Act, the *permanence period* for an eligible offsets project is:

- (a) if the project is a 100-year permanence period project—the 100-year permanence period for the project; or
- (b) if the project is a 25-year permanence period project—25 years.

168 Section 87 (heading)

Repeal the heading, substitute:

87 100-year permanence period

169 Subsection 87(1)

Omit “*maximum potential relinquishment period*”, substitute “*100-year permanence period*”.

170 Subsection 87(2)

Omit “*maximum potential relinquishment period*”, substitute “*100-year permanence period*”.

171 Subsection 88(2)

Repeal the subsection, substitute:

Relinquishment

- (2) The Regulator may, by written notice given to the person, require the person to relinquish a specified number of Australian carbon credit units.

172 Subsection 88(3)

Omit “A number specified under subsection (2) must not exceed the number of Kyoto”, substitute “The specified number must not exceed the number of”.

173 Subsections 88(4) and (5)

Repeal the subsections.

174 Paragraphs 89(1)(d) and (e)

Omit “maximum potential relinquishment period”, substitute “permanence period”.

175 Subsection 89(2)

Repeal the subsection, substitute:

Relinquishment

- (2) The Regulator may, by written notice given to the project proponent for the project, require the project proponent to relinquish a specified number of Australian carbon credit units.

176 Subsection 89(4) (note 1)

Omit “Note 1”, substitute “Note”.

177 Subsection 89(4) (note 2)

Repeal the note.

178 Paragraphs 90(1)(f) and (g)

Omit “maximum potential relinquishment period”, substitute “permanence period”.

179 Subsection 90(2)

Repeal the subsection, substitute:

Relinquishment

- (2) The Regulator may, by written notice given to the project proponent for the project, require the project proponent to relinquish a specified number of Australian carbon credit units.

180 Subsection 90(4) (note 1)

Omit “Note 1”, substitute “Note”.

181 Subsection 90(4) (note 2)

Repeal the note.

182 Paragraphs 91(1)(g) and (h)

Omit “maximum potential relinquishment period”, substitute “permanence period”.

183 Subsection 91(2)

Repeal the subsection, substitute:

Relinquishment

- (2) The Regulator may, by written notice given to the project proponent for the project, require the project proponent to relinquish a specified number of Australian carbon credit units.

184 Subsection 91(4) (note 1)

Omit “Note 1”, substitute “Note”.

185 Subsection 91(4) (note 2)

Repeal the note.

186 Division 4 of Part 7

Repeal the Division.

187 Subsection 97(1) (heading)

Repeal the heading, substitute:

Relevant area of land

188 Subsection 97(1)

Omit “This section applies to one or more areas of land if”, substitute “For the purposes of this section, each of one or more areas of land is a *relevant area of land* if”.

189 Paragraph 97(2)(a)

Omit “the area or areas of land”, substitute “a specified area, or one or more of specified areas, of land”.

190 After subsection 97(2)

Insert:

(2A) A specified area must consist of the whole or a part of a relevant area of land.

191 Subsection 97(3)

Omit “the area”, substitute “an area”.

191A Subsections 97(8) and (9)

Omit “the area” (first occurring), substitute “an area”.

192 Paragraph 97(10)(a)

Omit “the area”, substitute “an area”.

193 Subparagraphs 97(14)(c)(ii) and (d)(ii)

Omit “maximum potential relinquishment period”, substitute “permanence period”.

194 Paragraph 99(1)(b)

Omit “is not a project area for an eligible offsets project”, substitute “is not, and is not part of, a project area for an eligible offsets project that is a sequestration offsets project”.

195 Paragraph 99(1)(c)

Omit “is a project area for an eligible offsets project”, substitute “is, or is part of, a project area for an eligible offsets project that is a sequestration offsets project”.

196 Paragraphs 99(1)(e) and (f)

Repeal the paragraphs, substitute:

- (e) before the application was made, the applicant or another person voluntarily relinquished a number of Australian carbon credit units in order to satisfy a condition for revocation of the declaration; and

- (f) the number of relinquished units equals the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.

197 Subsection 99(1) (notes 1 and 2)

Repeal the notes.

198 Section 105

Omit:

- The Minister must not make or vary a methodology determination unless:
 - (a) a proposal for the determination or variation has been endorsed by the Domestic Offsets Integrity Committee; and
 - (b) the determination, or varied determination, complies with the offsets integrity standards and certain other requirements.
- A person may apply to the Domestic Offsets Integrity Committee for the endorsement of a proposal to make or vary a methodology determination.

substitute:

- Before making or varying a methodology determination, the Minister must request the Emissions Reduction Assurance Committee to advise on the proposed determination or variation.
- In making or varying a methodology determination, the Minister must have regard to:
 - (a) advice given by the Emissions Reduction Assurance Committee; and
 - (b) the offsets integrity standards; and
 - (c) certain other matters.

199 Paragraph 106(1)(c)

Omit “other than a native forest protection project”.

199A Paragraph 106(1)(c)

After “specified in”, insert “, or ascertained in accordance with,”.

200 Paragraph 106(1)(c)

Omit “determination; and”, substitute “determination.”.

201 Paragraph 106(1)(d)

Repeal the paragraph.

202 Subsection 106(1) (note)

Omit “Note”, substitute “Note 1”.

203 At the end of subsection 106(1)

Add:

- Note 2: See also subsection 27(4A) in relation to certain additionality requirements that may be specified in a methodology determination.
- Note 3: See also sections 69, 70 and 71 in relation to specifying a crediting period in a methodology determination.
- Note 4: See also paragraph 76(4)(e) in relation to specifying in a methodology determination the deadline for giving an offsets report.
- Note 5: See also subsection 77A(2) in relation to setting out in a methodology determination requirements relating to the division of an offsets project into 2 or more parts.

204 Subsection 106(4)

Repeal the subsection, substitute:

- (4) In deciding whether to make a methodology determination, the Minister must have regard to the following:
 - (a) whether the determination complies with the offsets integrity standards;
 - (b) any advice that the Emissions Reduction Assurance Committee has given to the Minister under subsection 123A(2) in relation to the making of the determination;
 - (c) whether any adverse environmental, economic or social impacts are likely to arise from the carrying out of the kind of project to which the determination applies;
 - (d) such other matters (if any) as the Minister considers relevant.

- (4A) The Minister must not make a methodology determination unless a method specified in, or ascertained in accordance with, the determination in accordance with paragraph (1)(c) provides that carbon abatement used in ascertaining the carbon dioxide equivalent net abatement amount for a project is eligible carbon abatement from the project.
- (4B) The Minister must not make a methodology determination if the Emissions Reduction Assurance Committee has advised the Minister under subsection 123A(2) that the determination does not comply with one or more of the offsets integrity standards.

205 Subsections 106(5) and (6)

Repeal the subsections:

205A After subsection 106(9)

Insert:

- (9A) A methodology determination may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

206 Subsection 106(12)

Repeal the subsection, substitute:

Advice given by the Emissions Reduction Assurance Committee

- (10) Before making a methodology determination, the Minister must request the Emissions Reduction Assurance Committee to advise the Minister about whether the Minister should make the determination.

Note: The Emissions Reduction Assurance Committee must have regard to certain matters in giving advice to the Minister (see section 123A).

- (11) If the Minister decides:
- (a) to make a methodology determination; or
 - (b) not to make a methodology determination;
- the Minister must:
- (c) cause a copy of any advice given by the Emissions Reduction Assurance Committee under subsection 123A(2) in relation

to the determination to be published on the Department's website; and

- (d) do so as soon as practicable after making the decision.

207 Sections 107 to 113

Repeal the sections.

208 Subsection 114(2)

Repeal the subsection, substitute:

- (2) In deciding whether to vary a methodology determination, the Minister must have regard to the following:
- (a) whether the varied determination complies with the offsets integrity standards;
 - (b) any advice that the Emissions Reduction Assurance Committee has given to the Minister under subsection 123A(2) in relation to the varying of the determination;
 - (c) whether any adverse environmental, economic or social impacts are likely to arise from the carrying out of the kind of project to which the varied determination applies;
 - (d) such other matters (if any) as the Minister considers relevant.
- (2A) The Minister must not vary a methodology determination unless a method specified in, or ascertained in accordance with, the varied determination in accordance with paragraph 106(1)(c) provides that carbon abatement used in ascertaining the carbon dioxide equivalent net abatement amount for a project is eligible carbon abatement from the project.

209 Subsections 114(3) and (4)

Repeal the subsections.

210 Subsection 114(6)

Repeal the subsection, substitute:

Advice given by the Emissions Reduction Assurance Committee

- (6) Before varying a methodology determination, the Minister must request the Emissions Reduction Assurance Committee to advise

the Minister about whether the Minister should vary the determination.

Note 1: The Emissions Reduction Assurance Committee must have regard to certain matters in giving advice to the Minister (see section 123A).

Note 2: For variations of a minor nature, see subsection (9).

- (7) In deciding whether to vary a methodology determination, the Minister must have regard to the following:
- (a) any relevant advice given by the Emissions Reduction Assurance Committee under subsection 123A(2);
 - (b) such other matters (if any) as the Minister considers relevant.
- (7A) The Minister must not vary a methodology determination so as to extend the crediting periods for the eligible offsets projects covered by the determination unless:
- (a) the Emissions Reduction Assurance Committee has advised the Minister under subsection 123A(2) or paragraph 255(hc) that the variation should be made; and
 - (b) the Emissions Reduction Assurance Committee has not previously advised the Minister under subsection 123A(2) or paragraph 255(hc) that the variation should not be made; and
 - (c) the determination has not previously been varied so as to extend the crediting periods.
- (7B) The Minister must not vary a methodology determination if the Emissions Reduction Assurance Committee has advised the Minister under subsection 123A(2) that the varied determination does not comply with one or more of the offsets integrity standards.
- (8) If the Minister decides:
- (a) to vary a methodology determination; or
 - (b) not to vary a methodology determination;
- the Minister must:
- (c) cause a copy of any advice given by the Emissions Reduction Assurance Committee under subsection 123A(2) in relation to the determination to be published on the Department's website; and
 - (d) do so as soon as practicable after making the decision.

(9) Subsections (6), (7), (7B) and (8) do not apply to a variation if the variation is of a minor nature.

211 Sections 116 to 121

Repeal the sections.

212 Subsection 122(2)

Repeal the subsection, substitute:

(2) Paragraph (1)(a) has effect subject to section 130.

Note: Section 130 deals with approval of the application of a specified methodology determination to a project with effect from the start of a reporting period.

213 Subsection 122(3)

Repeal the subsection.

214 Subsection 123(2)

Omit “Domestic Offsets Integrity Committee”, substitute “Emissions Reduction Assurance Committee”.

215 At the end of subsection 123(2)

Add:

Note: The Emissions Reduction Assurance Committee must have regard to certain matters in giving advice to the Minister (see section 123A).

216 Paragraph 123(3)(b)

Repeal the paragraph, substitute:

(b) any relevant advice given by the Emissions Reduction Assurance Committee under subsection 123A(2);

217 Subsection 123(5)

Omit “Domestic Offset Integrity Committee under subsection (2)”, substitute “Emissions Reduction Assurance Committee under subsection 123A(2)”.

218 After Subdivision D of Division 2 of Part 9

Insert:

Subdivision DA—Advice about making, varying or revoking methodology determinations

123A Advice by the Emissions Reduction Assurance Committee

Scope

- (1) This section applies if the Minister requests the Emissions Reduction Assurance Committee:
 - (a) under subsection 106(10), to give advice about whether the Minister should make a methodology determination; or
 - (b) under subsection 114(6), to give advice about whether the Minister should vary a methodology determination; or
 - (c) under subsection 123(2), to give advice about whether the Minister should revoke a methodology determination.

Committee to give advice

- (2) The Emissions Reduction Assurance Committee must give the requested advice to the Minister.

Note: The Committee must undertake public consultation before giving advice about making or varying a methodology determination (see section 123D).
- (3) If the requested advice relates to whether the Minister should make a methodology determination, the Emissions Reduction Assurance Committee must include in the advice the Committee's opinion on whether the proposed determination complies with the offsets integrity standards.
- (4) If the requested advice relates to whether the Minister should vary a methodology determination, the Emissions Reduction Assurance Committee must include in the advice the Committee's opinion on whether the determination as proposed to be varied complies with the offsets integrity standards.

Committee must have regard to certain matters

- (5) In giving the requested advice to the Minister, the Emissions Reduction Assurance Committee must have regard to the following:
 - (a) the offsets integrity standards;

- (b) any relevant matters specified in a direction in force under section 123B;
 - (c) any relevant advice given by the Regulator to the Committee.
- (6) Subsection (5) does not, by implication, limit the matters to which the Emissions Reduction Assurance Committee may have regard.

123B Additional matters for the Emissions Reduction Assurance Committee to take into account

The Minister may, by legislative instrument, direct the Emissions Reduction Assurance Committee to do any or all of the following:

- (a) have regard to one or more specified matters in giving advice about the making of a methodology determination;
- (b) have regard to one or more specified matters in giving advice about the variation of a methodology determination;
- (c) have regard to one or more specified matters in giving advice about the revocation of a methodology determination.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

123C Advice about whether methodology determination deals with eligible carbon abatement

If:

- (a) an Emissions Reduction Assurance Committee member:
 - (i) is an SES employee in the Department; or
 - (ii) holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department; and
- (b) the member advises the Committee that:
 - (i) if the Minister were to make a proposed methodology determination, the determination would not comply with the offsets integrity standard set out in paragraph 133(1)(c); or
 - (ii) if the Minister were to make a particular variation of a methodology determination, the varied determination would not comply with the offsets integrity standard set out in paragraph 133(1)(c);

then, in giving relevant advice to the Minister under subsection 123A(2), the Emissions Reduction Assurance Committee is to assume that the determination or varied determination, as the case may be, would not comply with that offsets integrity standard.

Note: Paragraph 133(1)(c) is about ensuring that the method in a methodology determination relates to eligible carbon abatement.

Subdivision DB—Consultation by the Emissions Reduction Assurance Committee

123D Consultation by the Emissions Reduction Assurance Committee

- (1) The Emissions Reduction Assurance Committee must not advise the Minister to make or vary a methodology determination unless the Committee has first:
 - (a) published on the Department’s website:
 - (i) a detailed outline of the proposed determination or variation, as the case may be; and
 - (ii) a notice inviting the public to make a submission to the Committee on the detailed outline by a specified time limit; and
 - (b) considered any submissions that were received within that time limit.
- (2) The time limit must be 28 days after the notice is published.
- (3) However, the time limit may be shorter than 28 days after the notice is published, so long as:
 - (a) the Emissions Reduction Assurance Committee considers that the time limit is appropriate in the circumstances; and
 - (b) the time limit is not shorter than 14 days after the notice is published.

Publication of submissions

- (4) The Emissions Reduction Assurance Committee must publish on the Department’s website any submissions under subsection (1) received within the time limit referred to in subparagraph (1)(a)(ii).

- (5) However, the Emissions Reduction Assurance Committee must not publish a particular submission made by a person if the person has requested the Committee not to publish the submission on the ground that publication of the submission could reasonably be expected to substantially prejudice the commercial interests of the person or another person.
- (6) A request under subsection (5) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Committee.

219A After section 124

Insert:

124A Modified meaning of *crediting period* for an emissions avoidance offsets project that has an extended accounting period

This Subdivision has effect, in relation to an emissions avoidance offsets project that has an extended accounting period that begins immediately after the end of a crediting period, as if a reference in this Subdivision (other than this section) to the crediting period were a reference to the period:

- (a) beginning at the start of the crediting period; and
- (b) ending at the end of the extended accounting period.

220 Subsection 130(4) (heading)

Repeal the heading, substitute:

Notification of approval etc.

221 After subsection 130(4)

Insert:

- (4A) As soon as practicable after giving an approval under subsection (2), the Regulator must:
- (a) annotate the relevant section 27 declaration to include a reference to the application of the methodology determination to the project from the start of the reporting period; and

- (b) give a copy of the annotated declaration to the project proponent for the project.

222 Subdivision F of Division 2 of Part 9

Repeal the Subdivision.

223 Paragraph 133(1)(a)

Repeal the paragraph, substitute:

- (a) the application of:
 - (i) the requirements set out in; and
 - (ii) the method specified in, or ascertained in accordance with;
a methodology determination, in relation to projects of the kind specified in the determination, should result in carbon abatement that is unlikely to occur in the ordinary course of events (disregarding the effect of this Act);

223A Paragraph 133(1)(b)

After “specified in”, insert “, or ascertained in accordance with,”.

224 Paragraph 133(1)(b)

Omit “or (d)”.

225 Paragraph 133(1)(c)

Repeal the paragraph, substitute:

- (c) a method specified in, or ascertained in accordance with, a methodology determination in accordance with paragraph 106(1)(c) should provide that carbon abatement used in ascertaining the carbon dioxide equivalent net abatement amount for a project must be eligible carbon abatement from the project;

225A Paragraph 133(1)(d)

After “specified in”, insert “, or ascertained in accordance with,”.

226 Paragraph 133(1)(d)

Omit “or (d)”.

227 Paragraph 133(1)(d)

Omit “relevant scientific results published in peer-reviewed literature; and”, substitute “clear and convincing evidence;”.

228 Paragraph 133(1)(e)

Repeal the paragraph, substitute:

- (e) a method specified in, or ascertained in accordance with, a methodology determination in accordance with paragraph 106(1)(c) should provide that, in ascertaining the carbon dioxide equivalent net abatement amount for a project, there is to be a deduction of the carbon dioxide equivalent of any amounts of greenhouse gases that:
 - (i) are emitted as a direct consequence of carrying out the project; and
 - (ii) under the determination, are taken to be material amounts;

229 Paragraph 133(1)(f)

Repeal the paragraph.

229A Paragraph 133(1)(g)

After “specified in”, insert “, or ascertained in accordance with,”.

230 Paragraph 133(1)(g)

Omit “or (d)”.

231 Paragraph 133(1)(h)

Repeal the paragraph, substitute:

- (h) such other standards (if any) as are set out in the legislative rules.

232 Subsection 133(1) (notes 1 and 2)

Repeal the notes.

233 Subsections 133(2) and (3)

Repeal the subsections, substitute:

- (2) Without limiting paragraph (1)(d), evidence mentioned in that paragraph may include relevant scientific results published in peer-reviewed literature.
- (3) Paragraph (1)(h) is not limited by the other paragraphs in subsection (1).

234 Subsection 133(6)

Repeal the subsection.

235 Section 135

Repeal the section, substitute:

135 References to project proponents

If there are 2 or more persons (the *multiple project proponents*) who:

- (a) have joint responsibility for carrying out an offsets project; and
- (b) jointly have the legal right to carry out the project;

then:

- (c) for the purposes of this Act, each of the multiple project proponents is a project proponent for the project; and
- (d) a reference in:
 - (i) this Act; or
 - (ii) the regulations; or
 - (iii) the legislative rules; or
 - (iv) any other instrument under this Act;

to the project proponent for the offsets project is to be read as a reference to each of the multiple project proponents.

237 Paragraphs 138(2)(f) and (g)

Repeal the paragraphs.

238 Paragraph 138(2)(h)

Omit “(other than a reference mentioned in paragraph (f) or (g))”.

239 After subparagraph 145(1)(b)(ii)

Insert:

(ia) the legislative rules;

240 Paragraph 154(1)(c)

Repeal the paragraph, substitute:

(c) the instruction does not contravene:

- (i) regulations or legislative rules made for the purposes of section 155 of this Act; or
- (ii) regulations made for the purposes of subsection 41(3) of the *Australian National Registry of Emissions Units Act 2011*.

241 Subsection 154(5)

Omit “If the unit is a Kyoto Australian carbon credit unit, regulations”, substitute “Regulations”.

242 Section 155 (heading)

Repeal the heading, substitute:

155 Restrictions on outgoing international transfers of Australian carbon credit units

242A Section 155

After “regulations”, insert “or the legislative rules”.

243 Section 155

Omit “Kyoto”.

244 Section 157

Repeal the section.

244A Paragraph 162(a)

Omit “within 6 months after the commencement of this section,”.

245 Paragraph 168(1)(b)

Before “the project area”, insert “if the project is an area-based offsets project—”.

245A After paragraph 168(1)(h)

Insert:

- (ha) whether the relevant declaration under section 27 is subject to a condition mentioned in subsection 28A(2); and

246 Paragraphs 168(1)(i) and (j)

Repeal the paragraphs, substitute:

- (i) if the project is a sequestration offsets project:
 - (i) whether the project is a 100-year permanence period project or a 25-year permanence period project; and
 - (ii) when the permanence period for the project will end; and

246A Before paragraph 168(1)(k)

Insert:

- (ja) if:
 - (i) the project is an area-based offsets project; and
 - (ii) the project area, or any of the project areas, is covered by a regional natural resource management plan;whether the project is consistent with the plan; and

247 Paragraph 168(1)(k)

Omit “Kyoto”.

248 Subparagraphs 168(1)(k)(iv), (v) and (vi)

Repeal the subparagraphs.

249 Paragraph 168(1)(l)

Repeal the paragraph.

250 Paragraph 168(1)(n)

After “if”, insert “the project is a sequestration offsets project, and”.

251 Paragraph 168(1)(n)

After “are”, insert “to any extent”.

252 Subparagraph 168(1)(n)(i)

Omit “that effect”, substitute “the effect that the project area or project areas are, to a specified extent, subject to a carbon maintenance obligation”.

252A After subsection 168(2)

Insert:

- (2A) For the purposes of subparagraph (1)(i)(ii) of this section, the permanence period for a project ends at the last time when a notice could be given under subsection 89(2) in relation to the project if it were assumed that the requirements of paragraphs 89(1)(b) and (c) had been met.

253 Subsection 168(3)

After “are”, insert “to any extent”.

254 Paragraph 168(3)(a)

Omit “that effect”, substitute “the effect that the area or areas are, to a specified extent, subject to a carbon maintenance obligation”.

255 Subsection 169(1)

After “eligible offsets project”, insert “that is an area-based offsets project”.

256 Paragraph 171(2)(a)

Repeal the paragraph, substitute:

- (a) to relinquish a specified number of Australian carbon credit units not exceeding the number of Australian carbon credit units issued as mentioned in paragraph (1)(a); and

257 Subsection 171(2) (notes 1 and 2)

Repeal the notes.

258 Paragraph 171(5)(b)

Omit “relinquished; or”, substitute “relinquished.”

259 Paragraphs 171(5)(c) and (d)

Repeal the paragraphs.

260 Sections 177 and 178

Repeal the sections.

261 Subsection 179(2) (definition of *prescribed amount*)

Omit “greatest”, substitute “greater”.

262 Subsection 179(2) (paragraphs (b) and (c) of the definition of *prescribed amount*)

Repeal the paragraphs, substitute:

- (b) 200% of the market value of an Australian carbon credit unit as at the compliance deadline.

263 Subsection 179(3) (definition of *prescribed amount*)

Omit “greatest”, substitute “greater”.

264 Subsection 179(3) (paragraphs (b) and (c) of the definition of *prescribed amount*)

Repeal the paragraphs, substitute:

- (b) 200% of the market value of an Australian carbon credit unit as at the compliance deadline.

265 Paragraph 196(1)(a)

Repeal the paragraph, substitute:

- (a) a person who is:
 - (i) a member of the staff of the Regulator; and
 - (ii) an SES employee or acting SES employee; or
- (aa) a person who is:
 - (i) a member of the staff of the Regulator; and
 - (ii) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position; or

266 Section 213

Omit “the regulations”, substitute “the associated provisions”.

268 Section 239

Omit:

- | |
|---|
| <ul style="list-style-type: none">• Certain decisions of the Domestic Offsets Integrity Committee may be reviewed by the Administrative Appeals Tribunal. |
|---|

269 Section 240 (table items 9, 10, 11, 12 and 14)

Repeal the items.

270 Division 3 of Part 24

Repeal the Division.

271 Part 26 (heading)

Repeal the heading, substitute:

**Part 26—Emissions Reduction Assurance
Committee**

272 Division 1 of Part 26 (heading)

Repeal the heading, substitute:

**Division 1—Establishment and functions of the Emissions
Reduction Assurance Committee**

273 Section 254

Repeal the section, substitute:

254 Emissions Reduction Assurance Committee

The committee known immediately before the commencement of this section as the Domestic Offsets Integrity Committee is continued in existence as the Emissions Reduction Assurance Committee.

Note: See also section 25B of the *Acts Interpretation Act 1901*.

276 Section 255 (heading)

Repeal the heading, substitute:

255 Functions of the Emissions Reduction Assurance Committee

277 Section 255

Omit “Domestic Offsets Integrity Committee”, substitute “Emissions Reduction Assurance Committee”.

278 Paragraph 255(d)

Repeal the paragraph, substitute:

- (d) to monitor the compliance of methodology determinations with the offsets integrity standards;
- (e) to undertake periodic reviews of methodology determinations;
- (f) to undertake public consultation in relation to reviews of methodology determinations;
- (g) to advise the Minister in relation to the outcomes of reviews of methodology determinations and any related public consultation;
- (h) to advise the Secretary in relation to the outcomes of reviews of methodology determinations and any related public consultation;
- (ha) to undertake crediting period extension reviews;
- (hb) to undertake public consultation in relation to crediting period extension reviews;
- (hc) to advise the Minister in relation to the outcomes of crediting period extension reviews and any related public consultation;
- (hd) to advise the Secretary in relation to the outcomes of crediting period extension reviews and any related public consultation;
- (i) to do anything incidental to or conducive to the performance of the above functions.

278A At the end of Division 1 of Part 26

Add:

255A Crediting period extension reviews

- (1) For the purposes of this Act, a *crediting period extension review* means a review of whether a methodology determination should be

varied so as to extend the crediting periods for the eligible offsets projects covered by the determination.

- (2) In performing the function conferred by paragraph 255(ha), the Emissions Reduction Assurance Committee must have regard to whether the relevant eligible offsets projects would still comply with the offsets integrity standard set out in paragraph 133(1)(a).
- (3) In performing the function conferred by paragraph 255(ha), the Emissions Reduction Assurance Committee must conduct such public consultation as it considers appropriate.
- (4) In performing the function conferred by paragraph 255(ha), the Emissions Reduction Assurance Committee must ensure that, for each methodology determination, the Committee completes a crediting period extension review before the first point in time when an eligible offsets project covered by the determination starts the last 12 months of its last crediting period.

278B After section 255

Insert:

255AA Request for review of methodology determinations

- (1) A person may, by written notice given to the Emissions Reduction Assurance Committee, request the Committee to review one or more methodology determinations under paragraph 255(e).
- (2) A request under subsection (1) must be accompanied by a statement that sets out:
 - (a) the reasons why the methodology determinations should be reviewed; and
 - (b) if there are any inconsistencies between the methodology determinations and the offsets integrity standards—an explanation of those inconsistencies.
- (3) If the Emissions Reduction Assurance Committee receives a request under subsection (1), the Committee must consider whether to undertake a review in response to the request.

279 Division 2 of Part 26 (heading)

Division 2—Membership of the Emissions Reduction Assurance Committee

280 Section 256 (heading)

Repeal the heading, substitute:

256 Membership of the Emissions Reduction Assurance Committee

281 Section 256

Omit “Domestic Offsets Integrity Committee”, substitute “Emissions Reduction Assurance Committee”.

282 Paragraph 256(b)

Omit “5”, substitute “8”.

283 Section 257 (heading)

Repeal the heading, substitute:

257 Appointment of Emissions Reduction Assurance Committee members

284 Subsection 257(1)

Omit “Each Domestic Offsets Integrity Committee”, substitute “Each Emissions Reduction Assurance Committee”.

285 Subsection 257(1) (note)

Omit “A Domestic Offsets Integrity Committee”, substitute “An Emissions Reduction Assurance Committee”.

286 Subsection 257(2)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

287 Subsection 257(2)

Omit “the Domestic Offsets Integrity Committee”, substitute “the Emissions Reduction Assurance Committee”.

288 Subsections 257(3) and (5)

Omit “Domestic Offsets Integrity Committee”, substitute “Emissions Reduction Assurance Committee”.

289 Subsection 257(6)

Omit “, and not more than 2, Domestic Offsets Integrity Committee members are officers”, substitute “of the Emissions Reduction Assurance Committee members is an officer”.

290 Subsection 257(7)

Omit “A Domestic Offsets Integrity Committee”, substitute “An Emissions Reduction Assurance Committee”.

291 Section 258 (heading)

Repeal the heading, substitute:

258 Period for appointment for Emissions Reduction Assurance Committee members

292 Section 258

Omit “A Domestic Offsets Integrity Committee”, substitute “An Emissions Reduction Assurance Committee”.

293 Section 259 (heading)

Repeal the heading, substitute:

259 Acting Emissions Reduction Assurance Committee members

294 Subsection 259(1) (heading)

Repeal the heading, substitute:

Acting Chair of Emissions Reduction Assurance Committee

295 Subsection 259(1)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

296 Subsection 259(1)

Omit “the Domestic Offsets Integrity Committee” (wherever occurring), substitute “the Emissions Reduction Assurance Committee”.

297 Subsection 259(2) (heading)

Repeal the heading, substitute:

Acting Emissions Reduction Assurance Committee member (other than the Chair)

298 Subsection 259(2)

Omit “a Domestic Offsets Integrity Committee” (first occurring), substitute “an Emissions Reduction Assurance Committee”.

299 Subsection 259(2)

Omit “the Domestic Offsets Integrity Committee” (first occurring), substitute “the Emissions Reduction Assurance Committee”.

300 Paragraph 259(2)(a)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

301 Paragraph 259(2)(a)

Omit “the Domestic Offsets Integrity Committee”, substitute “the Emissions Reduction Assurance Committee”.

302 Paragraph 259(2)(b)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

303 Paragraph 259(2)(b)

Omit “the Domestic Offsets Integrity Committee”, substitute “the Emissions Reduction Assurance Committee”.

304 Paragraph 259(3)(a)

Omit “the Domestic Offsets Integrity Committee”, substitute “the Emissions Reduction Assurance Committee”.

305 Paragraph 259(3)(b)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

306 Paragraph 259(3)(b)

Omit “the Domestic Offsets Integrity Committee”, substitute “the Emissions Reduction Assurance Committee”.

307 Subsection 259(3)

Omit “as a Domestic Offsets Integrity Committee”, substitute “as an Emissions Reduction Assurance Committee”.

308 Subsection 260(1)

Omit “the Domestic Offsets Integrity Committee” (first occurring), substitute “the Emissions Reduction Assurance Committee”.

309 Paragraphs 260(1)(a) and (b)

Omit “Domestic Offsets Integrity Committee”, substitute “Emissions Reduction Assurance Committee”.

310 Paragraph 260(1)(c)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

311 Paragraphs 260(1)(c) and (d)

Omit “the Domestic Offsets Integrity Committee” (wherever occurring), substitute “the Emissions Reduction Assurance Committee”.

312 Subsections 260(2) and (3)

Omit “Domestic Offsets Integrity Committee” (wherever occurring), substitute “Emissions Reduction Assurance Committee”.

313 Subsection 260(4)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

314 Paragraph 260(4)(a)

Omit “the Domestic Offsets Integrity Committee”, substitute “the Emissions Reduction Assurance Committee”.

315 Paragraph 260(4)(c)

Omit “of Domestic Offsets Integrity Committee”, substitute “of Emissions Reduction Assurance Committee”.

316 Subparagraph 260(4)(c)(i)

Omit “Domestic Offsets Integrity Committee”, substitute “Emissions Reduction Assurance Committee”.

317 Section 261

Omit “A Domestic Offsets Integrity Committee”, substitute “An Emissions Reduction Assurance Committee”.

318 Section 262 (heading)

Repeal the heading, substitute:

262 Disclosure of interests to Emissions Reduction Assurance Committee

319 Subsection 262(1)

Omit “A Domestic Offsets Integrity Committee”, substitute “An Emissions Reduction Assurance Committee”.

320 Subsections 262(1), (2), (3), (4), (5) and (6)

Omit “the Domestic Offsets Integrity Committee” (wherever occurring), substitute “the Emissions Reduction Assurance Committee”.

321 Section 263

Omit “A Domestic Offsets Integrity Committee”, substitute “An Emissions Reduction Assurance Committee”.

322 Section 264

Omit “A Domestic Offsets Integrity Committee” (wherever occurring), substitute “An Emissions Reduction Assurance Committee”.

323 Subsection 265(1)

Omit “Domestic Offsets Integrity Committee”, substitute “Emissions Reduction Assurance Committee”.

324 Subsection 265(2)

Omit “the Domestic Offsets Integrity Committee”, substitute “the Emissions Reduction Assurance Committee”.

325 Subsection 265(2)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

326 Subsection 266(1)

Omit “A Domestic Offsets Integrity Committee”, substitute “An Emissions Reduction Assurance Committee”.

327 Subsection 267(1)

Repeal the subsection, substitute:

- (1) The Minister may terminate the appointment of an Emissions Reduction Assurance Committee member:
 - (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity.

328 Subsection 267(2)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

329 Subparagraph 267(2)(a)(ii)

Omit “applies”, substitute “takes steps”.

330 Subparagraph 267(2)(a)(iii)

After “with”, insert “one or more of”.

331 Subparagraph 267(2)(a)(iv)

Omit “remuneration for the benefit of his or her creditors”, substitute “his or her remuneration for the benefit of one or more of his or her creditors”.

332 Paragraph 267(2)(b)

Omit “Domestic Offsets Integrity Committee”, substitute “Emissions Reduction Assurance Committee”.

333 Subsection 267(3)

Omit “Domestic Offsets Integrity Committee”, substitute “Emissions Reduction Assurance Committee”.

334 Subsection 267(4)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

335 Section 268

Omit “A Domestic Offsets Integrity Committee”, substitute “An Emissions Reduction Assurance Committee”.

336 Section 269 (heading)

Repeal the heading, substitute:

269 Assistance to Emissions Reduction Assurance Committee

337 Section 269

Omit “Domestic Offsets Integrity Committee” (wherever occurring), substitute “Emissions Reduction Assurance Committee”.

338 Paragraph 271(c)

Omit “Domestic Offsets Integrity Committee”, substitute “Emissions Reduction Assurance Committee”.

339 Subsection 275(3)

Omit “the Domestic Offsets Integrity Committee” (first occurring), substitute “the Emissions Reduction Assurance Committee”.

340 Subsection 275(3)

Omit “protected DOIC information”, substitute “protected ERAC information”.

341 Paragraph 275(3)(b)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

342 Paragraph 275(3)(c)

Omit “the Domestic Offsets Integrity Committee”, substitute “the Emissions Reduction Assurance Committee”.

343 Section 283 (heading)

Repeal the heading, substitute:

283 Disclosure for purposes of law enforcement—protected ERAC information

344 Subsection 283(1)

Omit “the Domestic Offsets Integrity Committee”, substitute “the Emissions Reduction Assurance Committee”.

345 Subsection 283(1)

Omit “protected DOIC information”, substitute “protected ERAC information”.

346 Subsection 283(2)

Omit “the Domestic Offsets Integrity Committee”, substitute “the Emissions Reduction Assurance Committee”.

347 Subsection 283(2)

Omit “protected DOIC information”, substitute “protected ERAC information”.

348 Paragraph 283(3)(a)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

349 Paragraph 283(3)(b)

Omit “the Domestic Offsets Integrity Committee”, substitute “the Emissions Reduction Assurance Committee”.

350 Subsection 283(3)

Omit “of the Domestic Offsets Integrity Committee”, substitute “of the Emissions Reduction Assurance Committee”.

351 Subsection 283(3)

Omit “protected DOIC information”, substitute “protected ERAC information”.

352 Paragraph 283(4)(b)

Omit “protected DOIC information”, substitute “protected ERAC information”.

353 Subsections 283(5) and (6)

Omit “the Domestic Offsets Integrity Committee”, substitute “the Emissions Reduction Assurance Committee”.

354 Subsection 283(6)

Omit “protected DOIC information”, substitute “protected ERAC information”.

355 After paragraph 286(d)

Insert:

- (da) to advise the Emissions Reduction Assurance Committee on matters relating to the making, variation or revocation of methodology determinations;

356 Subsection 287(1)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

357 Subsection 287(2)

Omit “and the regulations”, substitute “, the regulations and the legislative rules”.

358 Section 289

Repeal the section, substitute:

289 Information previously given to the Regulator

If:

- (a) on a particular occasion, a person gave information to the Regulator under this Act, the regulations or the legislative rules; and

(b) the person is subsequently required or permitted, under this Act, the regulations or the legislative rules, to give the same information to the Regulator;
the person is taken to have given the information to the Regulator on that later occasion.

359 Subsections 290(1), (2) and (3)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

360 Subsection 291(1)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

361 Subsection 291(3)

Repeal the subsection, substitute:

- (3) Subsection (1) does not apply to a power to make, vary or revoke a legislative instrument, unless the power is conferred by:
- (a) subsection 106(1) (power to make a methodology determination); or
 - (b) subsection 114(1) (power to vary a methodology determination); or
 - (c) subparagraph 122(1)(b)(ii) (power to specify the duration of a methodology determination); or
 - (d) subsection 123(1) (power to revoke a methodology determination).

362 After paragraph 297(f)

Insert:

- (fa) an inspector;
- (fb) a person assisting an inspector;

363 Paragraph 297(h)

Omit “a Domestic Offsets Integrity Committee”, substitute “an Emissions Reduction Assurance Committee”.

364 Subsection 299(1)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

365 Subsection 300(1)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

366 Section 303

Repeal the section, substitute:

303 Alternative constitutional basis

- (1) Without limiting its effect apart from this section, this Act and the associated provisions also have effect as provided by this section.

External affairs

- (2) This Act and the associated provisions also have the effect they would have if:
- (a) subsections (3) and (4) had not been enacted; and
 - (b) this Act and the associated provisions did not apply except to the extent to which they relate to:
 - (i) matters of international concern; or
 - (ii) matters external to Australia.

Limited types of offsets projects

- (3) This Act and the associated provisions also have the effect they would have if subsection (2) had not been enacted and each reference in this Act and the associated provisions to an offsets project were, by express provision, confined to an offsets project:
- (a) where the project proponent is, or each of the project proponents are, a constitutional corporation; or
 - (b) where the project proponent is:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; or
 - (c) that is, or is to be, carried on in a Territory; or
 - (d) that is, or is to be, carried on in a Commonwealth place; or

- (e) that is, or is to be, carried on in the course of, or in relation to, any of the following:
 - (i) trade or commerce between Australia and places outside Australia;
 - (ii) trade or commerce among the States;
 - (iii) trade or commerce within a Territory, between a State or Territory or between 2 Territories.

Limited power to purchase prescribed eligible carbon units

- (4) This Act and the associated provisions also have the effect they would have if:
 - (a) subsection (2) had not been enacted; and
 - (b) this Act, by express provision, prohibited the Regulator from entering into a carbon abatement contract, on behalf of the Commonwealth, for the purchase by the Commonwealth of prescribed eligible carbon units unless the units represent carbon abatement by a constitutional corporation.

367 Subsection 304(1)

After “regulations”, insert “or the legislative rules”.

368 Subsection 304(3)

After “regulations”, insert “or the legislative rules”.

369 After section 305

Insert:

305A Administrative decisions under the legislative rules

The legislative rules may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

Clean Energy Regulator Act 2011

370 After paragraph 46(1)(c)

Insert:

- (ca) monitoring the operation of a climate change law; or

(cb) evaluating the effectiveness of a climate change law; or

372 Section 47 (heading)

Repeal the heading, substitute:

47 Disclosure or use for purposes of development of methodology determinations

373 Paragraph 47(1)(d)

Repeal the paragraph, substitute:

(d) the disclosure or use is for the purposes of facilitating the development of one or more methodology determinations.

374 Subsection 47(2)

Repeal the subsection.

375 Subsection 47(3)

Omit “Subsections (1) and (2) do not”, substitute “Subsection (1) does not”.

375A Subsection 49(1)

After “particular protected information”, insert “, or a particular class of protected information,”.

376 Before paragraph 49(1)(a)

Insert:

(aa) a Department (within the meaning of the *Freedom of Information Act 1982*);

376A Before paragraph 49(1)(v)

Insert:

(ub) a prescribed agency or authority of the Commonwealth;

376B Subsection 49(2)

After “protected information”, insert “, or protected information included in that class of protected information, as the case may be,”.

376C Subsection 50(1)

After “particular protected information”, insert “, or a particular class of protected information,”.

376D Subsection 50(2)

After “protected information”, insert “, or protected information included in that class of protected information, as the case may be,”.

376E At the end of Part 3

Add:

56A Authorisations

To avoid doubt, an authorisation under paragraph 46(1)(b) or (2)(e) or subsection 49(2), 50(2) or 55(3) may:

- (a) authorise a specified officer or official; or
- (b) authorise a person who holds, occupies or performs the duties of, a specified office or position.

National Greenhouse and Energy Reporting Act 2007

377 Section 7 (definitions of *CFI audit* and *CFI audit report*)

Repeal the definitions.

378 Section 7

Insert:

ERF audit means:

- (a) an audit under section 214 or 215 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
- (b) an audit carried out for the purposes of preparing an audit report prescribed for the purposes of any of the following provisions of the *Carbon Credits (Carbon Farming Initiative) Act 2011*:
 - (i) paragraph 13(1)(e);
 - (ii) paragraph 13(1)(ea);
 - (iii) paragraph 13(1)(eb);
 - (iv) paragraph 23(1)(d);
 - (v) paragraph 76(4)(c);

- (vi) paragraph 76(4)(ca);
- (vii) paragraph 76(4)(cb).

ERF audit report means:

- (a) an audit report under section 214 or 215 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
- (b) an audit report prescribed for the purposes of any of the following provisions of the *Carbon Credits (Carbon Farming Initiative) Act 2011*:
 - (i) paragraph 13(1)(e);
 - (ii) paragraph 13(1)(ea);
 - (iii) paragraph 13(1)(eb);
 - (iv) paragraph 23(1)(d);
 - (v) paragraph 76(4)(c);
 - (vi) paragraph 76(4)(ca);
 - (vii) paragraph 76(4)(cb).

378A At the end of paragraph 23(1)(b)

Add:

- ; or (v) if the person is an employee of the Commonwealth or of an authority of the Commonwealth, or is appointed to an office under a law of the Commonwealth—advising a Minister about matters relating to greenhouse gas emissions, energy production or energy consumption.

379 Section 41

Repeal the section, substitute:

41 Amount of penalty

The penalty to be specified in an infringement notice relating to a person's alleged contravention of a civil penalty provision must be a pecuniary penalty equal to whichever is the lesser of the following amounts:

- (a) one-fifth of the maximum penalty that a Court could impose on the person for that contravention;
- (b) if the person is an individual—12 penalty units;
- (c) if the person is a body corporate—60 penalty units.

Note: To work out the maximum penalty mentioned in paragraph (a), see subsection 31(3).

380 Paragraph 75(1)(c)

Omit “CFI audits”, substitute “ERF audits”.

381 Paragraph 75(1)(d)

Omit “CFI audit reports”, substitute “ERF audit reports”.

Division 2—Application and transitional provisions

382 Interpretation

(1) In this Division:

ERF transitional application has the meaning given by subitem (2).

legislative rules means legislative rules made under section 308 of the new law.

new law means the *Carbon Credits (Carbon Farming Initiative) Act 2011* as amended by this Schedule.

old law means the *Carbon Credits (Carbon Farming Initiative) Act 2011* (disregarding the amendments made by this Schedule).

ERF transitional application

(2) For the purposes of this Division, if:

(a) either:

(i) before the commencement of this item, a person made an application to the Regulator under section 22 of the old law for the declaration of an offsets project as an eligible offsets project; or

(ii) after the commencement of this item, but before 1 July 2015, a person makes an application to the Regulator under section 22 of the new law for the declaration of an offsets project as an eligible offsets project; and

(b) if subparagraph (a)(i) applies—before the commencement of this item, the Regulator has neither:

(i) declared that the offsets project is an eligible offsets project for the purposes of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; nor

- (ii) refused to declare that the offsets project is an eligible offsets project for the purposes of that Act; and
- (c) the project is covered by a methodology determination that was made before the commencement of this item;

the application is an *ERF transitional application*.

383 Transitional—protected ERAC information

In determining whether information obtained by a person at a particular time is protected ERAC information for the purposes of the new law, it is immaterial whether the Emissions Reduction Assurance Committee was known at that time as the Domestic Offsets Integrity Committee.

384 Transitional—Australian carbon credit units

The amendments of section 11 of the old law made by this Schedule do not affect the continuity of an Australian carbon credit unit that existed immediately before the commencement of this item.

385 Transitional—certificate of entitlement

The amendments of section 11 of the old law made by this Schedule do not apply to a certificate of entitlement if, before the commencement of this item, the Regulator fulfilled the obligation imposed by subsection 11(2), (3) or (4) of the old law in relation to the certificate.

386 Transitional—prescribed non-CFI offsets scheme

- (1) This item applies if a prescribed non-CFI offsets scheme (within the meaning of the old law) existed immediately before the commencement of this item.
- (2) Despite the repeal of the following provisions by this Schedule, those provisions continue to apply in relation to the scheme, after the commencement of this item, as if that repeal had not happened:
 - (a) subsection 16(2A) of the old law;
 - (b) subsection 18(3) of the old law;
 - (c) Division 4 of Part 7 of the old law;
 - (d) item 14 of the table in section 240 of the old law.

387 Transitional—native forest protection projects

- (1) This item applies if an eligible offsets project is a native forest protection project (within the meaning of the old law), and:
-

- (a) the following conditions are satisfied:
 - (i) the project existed immediately before the commencement of this item;
 - (ii) the applicable methodology determination includes one or more provisions covered by paragraph 106(1)(d) of the old law; or
 - (b) the following conditions are satisfied:
 - (i) the project became an eligible offsets project after the commencement of this item as the result of an ERF transitional application;
 - (ii) the project is covered by the *Carbon Credits (Carbon Farming Initiative) (Avoided Deforestation) Methodology Determination 2013*;
 - (iii) that determination includes one or more provisions covered by paragraph 106(1)(d) of the old law.
- (2) Despite the repeal of section 17 of the old law by this Schedule, that section continues to apply to the project, after the commencement of this item, as if that repeal had not happened.
- (3) Section 16 of the new law does not apply to the project.

388 Transitional—eligible offsets projects

- (1) This item applies to a declaration that:
- (a) was made under subsection 27(2) of the old law; and
 - (b) was in force immediately before the commencement of this item.
- (2) The declaration has effect, after the commencement of this item, as if it had been made under subsection 27(2) of the new law.
- (3) For the purposes of subitem (2), disregard any part of the declaration that was covered by subparagraph 27(2)(a)(ii) or (b)(ii) or paragraph 27(3)(e) of the old law.
- (4) If the declaration does not comply with paragraph 27(3)(ca) or (cb) of the new law, the Regulator may vary the declaration so that the declaration complies with that paragraph.

388A Transitional—special rules for designated Verified Carbon Standard projects

Designated Verified Carbon Standard project

- (1) For the purposes of this item, an offsets project is a *designated Verified Carbon Standard project* if:
- (a) the project was registered under the Verified Carbon Standard at any time before the commencement of this item; and
 - (b) the project is, or is to be, carried on in Australia.

Methodology determination

- (2) If:
- (a) after the commencement of this item, the Minister makes a methodology determination that is expressed to apply to a particular kind of designated Verified Carbon Standard project; and
 - (b) the determination is expressed to have come into force at the start of a specified day; and
 - (c) the specified day is earlier than the day on which the determination is made; and
 - (d) the specified day is not earlier than 1 January 2013;
- then:
- (e) paragraph 122(1)(a) of the new law does not apply to the determination; and
 - (f) the determination comes into force at the start of the specified day.

Declaration of eligible offsets project

- (3) If, during the period:
- (a) beginning at the commencement of this item; and
 - (b) ending at the end of 30 June 2015;
- a person makes an application to the Regulator under section 22 of the new law for the declaration of a designated Verified Carbon Standard project as an eligible offsets project:

- (c) paragraph 27(4)(d) and subsection 27(4A) of the new law do not apply for the purposes of the Regulator making a decision on the application; and
- (d) if a declaration made in response to the application is expressed to take effect on a specified day, and:
 - (i) the specified day is earlier than the day on which the declaration is made; and
 - (ii) the specified day is not earlier than 1 January 2013; and
 - (iii) the applicant has consented to the specification of the specified day;then:
 - (iv) subsection 27(15) of the new law does not apply to the declaration; and
 - (v) the declaration takes effect on the specified day.

388B Transitional—newness requirement (single project proponent)

Scope

- (1) This item applies to an offsets project (within the meaning of the new law) if:
 - (a) a person is the only project proponent for the project (within the meaning of the new law); and
 - (b) at a particular time (the *intention notice time*) during the period:
 - (i) beginning at the start of 1 July 2014; and
 - (ii) ending immediately before the commencement of this item;the person gave the Regulator written notice of the person's intention to make an application during the period:
 - (iii) beginning at the commencement of this item; and
 - (iv) ending immediately before the start of 1 July 2015;for the declaration of the project as an eligible offsets project; and
 - (c) the notice sets out:
 - (i) the name of the project; and
 - (ii) a description of the project; and
 - (iii) the location of the project; and

- (d) the notice is accompanied by documentary evidence that the person is the only project proponent for the project (within the meaning of the new law); and
- (e) during the period:
 - (i) beginning at the commencement of this item; and
 - (ii) ending immediately before the start of 1 July 2015;the person makes an application for the declaration of the project as an eligible offsets project.

Newness requirement

- (2) Subparagraph 27(4A)(a)(i) of the new law has effect, for the purposes of the Regulator making a decision on the application, as if:
 - (a) the words “has not begun to be implemented” were omitted and the words “had not begun to be implemented at the intention notice time” were substituted; and
 - (b) the expression “intention notice time” had the meaning given by subitem (1).

New law

- (3) For the purposes of this item, assume that:
 - (a) the definition of *project proponent* in section 5 of the new law; and
 - (b) section 53 of the new law;had been in force throughout the period first mentioned in paragraph (1)(b) of this item.

388C Transitional—newness requirement (multiple project proponents)

Scope

- (1) This item applies to an offsets project (within the meaning of the new law) if:
 - (a) each of 2 or more persons is a project proponent for the project (within the meaning of the new law); and
 - (b) at a particular time (the *intention notice time*) during the period:
 - (i) beginning at the start of 1 July 2014; and

- (ii) ending immediately before the commencement of this item;
those persons jointly gave the Regulator written notice of their intention to make an application during the period:
 - (iii) beginning at the commencement of this item; and
 - (iv) ending immediately before the start of 1 July 2015;for the declaration of the project as an eligible offsets project; and
- (c) the notice sets out:
 - (i) the name of the project; and
 - (ii) a description of the project; and
 - (iii) the location of the project; and
- (d) the notice is accompanied by documentary evidence that each of those persons is a project proponent for the project (within the meaning of the new law); and
- (e) during the period:
 - (i) beginning at the commencement of this item; and
 - (ii) ending immediately before the start of 1 July 2015;those persons make (or are taken by section 138 of the new law to make) an application for the declaration of the project as an eligible offsets project.

Newness requirement

- (2) Subparagraph 27(4A)(a)(i) of the new law has effect, for the purposes of the Regulator making a decision on the application, as if:
 - (a) the words “has not begun to be implemented” were omitted and the words “had not begun to be implemented at the intention notice time” were substituted; and
 - (b) the expression “intention notice time” had the meaning given by subitem (1).

New law

- (3) For the purposes of this item, assume that:
 - (a) the definition of *project proponent* in section 5 of the new law; and
 - (b) sections 53 and 135 of the new law;

had been in force throughout the period first mentioned in paragraph (1)(b) of this item.

389 Transitional—ERF transitional application

Scope

- (1) This item applies if a person makes an ERF transitional application for the declaration of an offsets project as an eligible offsets project.

New law applies subject to certain modifications

- (2) The new law applies for the purposes of the Regulator making a decision on the application, subject to the following modifications:
- (a) paragraph 27(4)(d) and section 41 of the old law (additionality test) apply instead of paragraph 27(4)(d) and subsection 27(4A) of the new law;
 - (b) if the applicant was a recognised offsets entity (within the meaning of the old law) immediately before the commencement of this item—the applicant is taken to have satisfied the requirement set out in paragraph 27(4)(f) of the new law immediately after the commencement of this item;
 - (c) if, before the commencement of this item, the applicant made an application under section 60 of the old law for recognition as an offsets entity, but that application has not been accepted or refused—the Regulator may take information set out in the section 60 application into account in deciding whether the applicant satisfies the requirement in paragraph 27(4)(f) of the new law;
 - (d) subsections 27(15) and (16) of the old law apply instead of subsection 27(15) of the new law.

390 Transitional—permanence periods

Scope

- (1) This item applies to a sequestration offsets project if:
- (a) a declaration relating to the project:
 - (i) was made under subsection 27(2) of the old law before the commencement of this item; and
 - (ii) was in force immediately before the commencement of this item; or
-

- (b) a declaration relating to the project:
 - (i) was made under subsection 27(2) of the new law after the commencement of this item; and
 - (ii) was made as the result of an ERF transitional application that was made before the commencement of this item.

Permanence period

- (2) The project proponent in relation to the project may request the Regulator, in writing, that the project be treated as a 25-year permanence period project. Such a request must be made within 24 months after the commencement of this item.
- (3) If a request is made under subitem (2) in relation to the project, the declaration has, and is taken always to have had, effect, after whichever is the later of the following times:
 - (a) the commencement of this item;
 - (b) the time when the declaration is made;as if the declaration had declared under paragraph 27(3)(f) of the new law that the project is a 25-year permanence period project.
- (4) If no request is made under subitem (2) in relation to the project, the declaration has, and is taken always to have had, effect, after whichever is the later of the following times:
 - (a) the commencement of this item;
 - (b) the time when the declaration is made;as if the declaration had declared under paragraph 27(3)(e) of the new law that the project is a 100-year permanence period project.

Relinquishment of Australian carbon credit units

- (5) If:
 - (a) a request is made under subitem (2) in relation to the project; and
 - (b) Australian carbon credit units have been issued in relation to the project before the end of 24 months after the commencement of this item;the Regulator may, by written notice given to the project proponent of the project, require the project proponent to relinquish a specified number of Australian carbon credit units.

- (6) The specified number must be:
- (a) if the project is specified in a legislative instrument made by the Minister—the number ascertained in accordance with the instrument; or
 - (b) otherwise—the number that is equal to 20% of the total number of Australian carbon credit units mentioned in paragraph (5)(b).

If the number worked out under paragraph (b) is not a whole number, it is to be rounded down to the nearest whole number.

- (7) The project proponent must comply with the requirement:
- (a) within 90 days after the notice was given; or
 - (b) if the Regulator allows a later time—before that later time.
- (8) For the purposes of Part 15 of the new law, treat a requirement under subitem (5) as if it were a requirement under Part 7 of the new law.

Note: This subitem means that:

- (a) a relinquishment notice given by the project proponent under subsection 175(1) of the new law must specify the requirement under subitem (5) (see paragraph 175(2)(b) of the new law); and
- (b) section 176 of the new law (deemed relinquishment) applies in relation to the requirement under subitem (5); and
- (c) an administrative penalty is payable under section 179 of the new law for non-compliance with the requirement under subitem (5).

Eligible voluntary action

- (9) For the purposes of:
- (a) the definition of *eligible voluntary action* in section 5 of the new law; and
 - (b) Part 10 of the new law;
- treat subitem (2) as if it were a provision of the new law.

390A Transitional—permanence periods for projects

Scope

- (1) This item applies to an eligible offsets project if:
- (a) the project was an eligible offsets project immediately before the commencement of this item; and
 - (b) the project is a sequestration offsets project; and
 - (c) the project is a 25-year permanence period project.
-

Requirements relating to permanence periods

- (2) If, apart from this item, the period first mentioned in any of the following provisions of the new law (so far as that provision applies to the project) began before the commencement of this item;
- (a) paragraph 89(1)(d);
 - (b) paragraph 89(1)(e);
 - (c) paragraph 90(1)(f);
 - (d) paragraph 90(1)(g);
 - (e) paragraph 91(1)(g);
 - (f) paragraph 91(1)(h);
 - (g) paragraph 97(14)(c);
 - (h) paragraph 97(14)(d);

that provision has effect, in relation to the project, as if that period had begun at the commencement of this item.

391 Transitional—registered indigenous land use agreements

Despite the repeal of subsection 27(19) of the old law by this Schedule, that subsection continues to apply, after the commencement of this item, in relation to a consent given before the commencement of this item, as if that repeal had not happened.

392 Transitional—methodology determinations

The amendments of section 106 of the old law made by this Schedule do not affect the continuity of a methodology determination that was in force immediately before the commencement of this item.

392A Transitional—pre-commencement proposals for methodology determinations

Proposals that have been endorsed

- (1) If, before the commencement of this item:
- (a) the Domestic Offsets Integrity Committee endorsed a proposal for a methodology determination under section 112 of the old law; and
 - (b) the Minister has neither:

- (i) decided to make a methodology determination to give effect to the proposal; nor
- (ii) decided not to make a methodology determination to give effect to the proposal;

the relevant provisions of the old law apply in relation to the following:

- (c) the proposal;
- (d) the making of a methodology determination to give effect to the proposal;
- (e) a decision not to make a methodology determination to give effect to the proposal;

instead of the corresponding provisions of the new law.

Note: For *relevant provisions of the old law*, see subitem (6).

Proposals for which public consultation has commenced

- (2) If, before the commencement of this item, the Domestic Offsets Integrity Committee:

- (a) has published a proposal for a methodology determination under subsection 112(5) of the old law; and
- (b) has neither endorsed, nor refused to endorse, the proposal under section 112 of the old law;

the relevant provisions of the old law apply in relation to the following:

- (c) the proposal;
- (d) the endorsement of the proposal;
- (e) a decision to refuse to endorse the proposal;
- (f) if the proposal is endorsed:
 - (i) the making of a methodology determination to give effect to the proposal; and
 - (ii) a decision not to make a methodology determination to give effect to the proposal;

instead of the corresponding provisions of the new law.

Note: For *relevant provisions of the old law*, see subitem (6).

Proposals that have been refused endorsement

- (3) If, before the commencement of this item, the Domestic Offsets Integrity Committee has made a decision under section 112 of the old law to refuse to endorse a proposal for a methodology determination, the relevant provisions of the old law apply in relation to the following:
-

- (a) a review by the Administrative Appeals Tribunal of the decision;
- (b) if, as a result of such a review, the proposal is endorsed:
 - (i) the making of a methodology determination to give effect to the proposal; and
 - (ii) a decision not to make a methodology determination to give effect to the proposal;

instead of the corresponding provisions of the new law.

Note: For *relevant provisions of the old law*, see subitem (6).

Functions of the Emissions Reduction Assurance Committee

- (4) For the purposes of subitems (1), (2) and (3), a reference in the relevant provisions of the old law to the Domestic Offsets Integrity Committee is, in relation to matters occurring after the commencement of this item, to be read as a reference to the Emissions Reduction Assurance Committee.
- (5) The Emissions Reduction Assurance Committee has the functions conferred on it by the relevant provisions of the old law, as applied by subitems (1), (2) and (3).

Note: For *relevant provisions of the old law*, see subitem (6).

Relevant provisions of the old law

- (6) In this item:

relevant provisions of the old law means the following provisions:

 - (a) Subdivision A of Division 2 of Part 9 of the old law;
 - (b) Division 3 of Part 9 of the old law;
 - (c) section 245A of the old law;
 - (d) a provision of the old law that deals with the interpretation of an expression used in a provision covered by paragraph (a), (b) or (c).

392B Transitional—pre-commencement proposals for variations of methodology determinations

Proposals that have been endorsed

- (1) If, before the commencement of this item:

- (a) the Domestic Offsets Integrity Committee endorsed a proposal for the variation of a methodology determination under section 120 of the old law; and
- (b) the Minister has neither:
 - (i) decided to vary the methodology determination so as to give effect to the proposal; nor
 - (ii) decided not to vary the methodology determination so as to give effect to the proposal;

the relevant provisions of the old law apply in relation to the following:

- (c) the proposal;
- (d) the variation of the methodology determination so as to give effect to the proposal;
- (e) a decision not to vary the methodology determination so as to give effect to the proposal;

instead of the corresponding provisions of the new law.

Note: For *relevant provisions of the old law*, see subitem (6).

Proposals for which public consultation has commenced

- (2) If, before the commencement of this item, the Domestic Offsets Integrity Committee:

- (a) has published a proposal for the variation of a methodology determination under subsection 120(5) of the old law; and
- (b) has neither endorsed, nor refused to endorse, the proposal under section 120 of the old law;

the relevant provisions of the old law apply in relation to the following:

- (c) the proposal;
- (d) the endorsement of the proposal;
- (e) a decision to refuse to endorse the proposal;
- (f) if the proposal is endorsed:
 - (i) the variation of the methodology determination so as to give effect to the proposal; and
 - (ii) a decision not to vary the methodology determination so as to give effect to the proposal;

instead of the corresponding provisions of the new law.

Note: For *relevant provisions of the old law*, see subitem (6).

Proposals that have been refused endorsement

- (3) If, before the commencement of this item, the Domestic Offsets Integrity Committee has made a decision under section 120 of the old law to refuse to endorse a proposal for the variation of a methodology determination, the relevant provisions of the old law apply in relation to the following:
- (a) a review by the Administrative Appeals Tribunal of the decision;
 - (b) if, as a result of such a review, the proposal is endorsed:
 - (i) the variation of the methodology determination so as to give effect to the proposal; and
 - (ii) a decision not to vary the methodology determination so as to give effect to the proposal;

instead of the corresponding provisions of the new law.

Note: For *relevant provisions of the old law*, see subitem (6).

Functions of the Emissions Reduction Assurance Committee

- (4) For the purposes of subitems (1), (2) and (3), a reference in the relevant provisions of the old law to the Domestic Offsets Integrity Committee is, in relation to matters occurring after the commencement of this item, to be read as a reference to the Emissions Reduction Assurance Committee.
- (5) The Emissions Reduction Assurance Committee has the functions conferred on it by the relevant provisions of the old law, as applied by subitems (1), (2) and (3).

Note: For *relevant provisions of the old law*, see subitem (6).

Relevant provisions of the old law

- (6) In this item:
- relevant provisions of the old law* means the following provisions:
- (a) Subdivision B of Division 2 of Part 9 of the old law;
 - (b) Division 3 of Part 9 of the old law;
 - (c) section 245A of the old law;
 - (d) a provision of the old law that deals with the interpretation of an expression used in a provision covered by paragraph (a), (b) or (c).

393 Transitional—advice given by the Interim Emissions Reduction Assurance Committee

Scope

- (1) This item applies if, before the commencement of this item:
- (a) the Minister requested the Interim Emissions Reduction Assurance Committee to advise the Minister about whether the Minister should make a methodology determination; and
 - (aa) the Committee or the Department published on the Department's website:
 - (i) a draft of the methodology determination; and
 - (ii) a notice inviting the public to make a submission on the draft by a specified time limit (being a time limit of at least 14 days after the notice is published); and
 - (ab) the Committee considered any submissions that were received within that time limit; and
 - (b) the Committee gave that advice to the Minister.

Effect of request and advice

- (2) The new law has effect as if:
- (a) the Minister had, immediately after the commencement of this item, made that request to the Emissions Reduction Assurance Committee under subsection 106(10) of the new law; and
 - (b) the Emissions Reduction Assurance Committee had, immediately after the request was made, given that advice to the Minister under subsection 123A(2) of the new law.
- (2A) Section 123D of the new law does not apply to that advice.

Definition

- (3) In this item:
- Interim Emissions Reduction Assurance Committee*** means the committee that was:
- (a) established under the executive power of the Commonwealth before the commencement of this item; and
 - (b) known as the Interim Emissions Reduction Assurance Committee.

393A Transitional—advice request given to the Interim Emissions Reduction Assurance Committee

Scope

- (1) This item applies if, before the commencement of this item:
- (a) the Minister requested the Interim Emissions Reduction Assurance Committee to advise the Minister about whether the Minister should make a methodology determination; and
 - (b) the Committee had not given that advice to the Minister; and
 - (c) the Committee or the Department published on the Department's website:
 - (i) a draft of the methodology determination; and
 - (ii) a notice inviting the public to make a submission on the draft by a specified time limit (being a time limit of at least 14 days after the notice is published).

Effect of request

- (2) The new law has effect as if the Minister had, immediately after the commencement of this item, made that request to the Emissions Reduction Assurance Committee under subsection 106(10) of the new law.

Consultation

- (3) The Emissions Reduction Assurance Committee:
- (a) is not required to comply with section 123D in relation to the requested advice; and
 - (b) must not advise the Minister to make the methodology determination unless the Committee has considered any submissions mentioned in subparagraph (1)(c)(ii) of this item that were received within the time limit mentioned in that subparagraph; and
 - (c) must publish on the Department's website any submissions received within that time limit.
- (4) However, the Emissions Reduction Assurance Committee must not publish a particular submission made by a person if the person has requested the Committee not to publish the submission on the ground that publication of the submission could reasonably be expected to

substantially prejudice the commercial interests of the person or another person.

- (5) A request under subitem (4) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Emissions Reduction Assurance Committee.

Definition

- (6) In this item:

Interim Emissions Reduction Assurance Committee means the committee that was:

- (a) established under the executive power of the Commonwealth before the commencement of this item; and
- (b) known as the Interim Emissions Reduction Assurance Committee.

394 Transitional—subsection 41(6) of the *Carbon Credits (Carbon Farming Initiative) Act 2011*

Despite the repeal of subsection 41(6) of the old law by this Schedule, that subsection continues to apply, after the commencement of this item, as if that repeal had not happened.

395 Transitional—Subdivision F of Division 2 of Part 9 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*

Despite the repeal of Subdivision F of Division 2 of Part 9 of the old law by this Schedule, that Subdivision continues to apply, after the commencement of this item, as if that repeal had not happened.

397 Transitional—information about proposals for methodology determinations

- (1) This item applies to protected information that, immediately before the commencement of this item, was covered by paragraph 47(2)(a) of the *Clean Energy Regulator Act 2011*.
- (2) Despite the repeal of subsection 47(2) of the *Clean Energy Regulator Act 2011* by this Schedule, that subsection continues to apply, in relation to the protected information, as if that repeal had not happened.

- (3) Despite the amendment of subsection 47(3) of the *Clean Energy Regulator Act 2011* made by this Schedule, that subsection continues to apply, in relation to the protected information, as if that amendment had not been made.

398 Transitional—compensation for acquisition of property

Section 300 of the new law has effect as if the provisions of this Schedule were provisions of the new law.

399 Climate change law

This Division is taken to be a climate change law for the purposes of the *Clean Energy Regulator Act 2011*.

Part 3—Additional amendments relating to legislative rules

Carbon Credits (Carbon Farming Initiative) Act 2011

400 Section 5 (paragraphs (a), (b), (c) and (d) of the definition of *Crown lands Minister*)

After “regulations”, insert “or the legislative rules”.

401 Section 5 (paragraph (b) of the definition of *Kyoto abatement deadline*)

After “regulations”, insert “or the legislative rules”.

402 Section 5 (at the end of paragraph (e) of the definition of *land rights land*)

Add “or the legislative rules”.

403 Section 5 (at the end of paragraph (f) of the definition of *natural disturbance*)

Add “or the legislative rules”.

404 Section 5

Insert:

prescribed means prescribed by the regulations or the legislative rules.

405 Section 5 (at the end of subparagraph (d)(ii) of the definition of *statutory authority*)

Add “or the legislative rules”.

406 Subsections 7(1) and (2)

After “regulations”, insert “or legislative rules”.

407 Subsection 7(3)

After “Regulations”, insert “or legislative rules”.

408 Paragraphs 13(1)(d), (g) and (h)

After “regulations”, insert “or the legislative rules”.

409 Paragraph 15(2)(h)

After “regulations”, insert “or the legislative rules”.

410 Paragraphs 23(1)(c), (d), (h) and (i)

After “regulations”, insert “or the legislative rules”.

411 Paragraphs 27(3)(b) and (d)

After “regulations”, insert “or the legislative rules”.

412 Paragraph 27(4)(l)

After “regulations”, insert “or the legislative rules”.

413 At the end of paragraph 27(5)(b)

Add “or the legislative rules”.

414 Subsection 29(1) (heading)

Repeal the heading, substitute:

Regulations or legislative rules

415 Subsection 29(1)

After “regulations”, insert “or the legislative rules”.

416 Subsections 29(2) and (3)

After “Regulations”, insert “or legislative rules”.

417 At the end of paragraph 29(3)(a)

Add “or legislative rules, as the case may be”.

418 Subsection 29(6)

After “Regulations”, insert “or legislative rules”.

419 Subsection 29(6)

After “those regulations”, insert “or legislative rules, as the case may be”.

420 Subsection 29(7)

After “Regulations”, insert “or legislative rules”.

421 Subsection 29(7)

After “those regulations”, insert “or legislative rules, as the case may be”.

422 Paragraph 29(8)(a)

After “regulations”, insert “or legislative rules”.

423 Subsection 29(9)

After “with regulations”, insert “or legislative rules”.

424 Subsection 30(1) (heading)

Repeal the heading, substitute:

Regulations or legislative rules

425 Subsection 30(1)

After “regulations”, insert “or the legislative rules”.

426 Subsections 30(2) and (3)

After “Regulations”, insert “or legislative rules”.

427 At the end of paragraph 30(3)(a)

Add “or legislative rules, as the case may be”.

428 Subsection 30(6)

After “Regulations”, insert “or legislative rules”.

429 Subsection 30(6)

After “those regulations”, insert “or legislative rules, as the case may be”.

430 Subsection 30(7)

After “Regulations”, insert “or legislative rules”.

431 Subsection 30(7)

After “those regulations”, insert “or legislative rules, as the case may be”.

432 Subsection 30(9)

After “Regulations”, insert “or legislative rules”.

433 Subsection 30(9)

After “those regulations”, insert “or legislative rules, as the case may be”.

434 Subsection 30(10)

After “with regulations”, insert “or legislative rules”.

435 Subsection 31(2) (heading)

Repeal the heading, substitute:

Regulations or legislative rules

436 Subsection 31(2)

After “regulations”, insert “or the legislative rules”.

437 Subsections 31(3) and (4)

After “Regulations”, insert “or legislative rules”.

438 At the end of paragraph 31(4)(a)

Add “or legislative rules, as the case may be”.

439 Subsection 31(7)

After “Regulations”, insert “or legislative rules”.

440 Subsection 31(7)

After “those regulations”, insert “or legislative rules, as the case may be”.

441 Subsection 31(8)

After “Regulations”, insert “or legislative rules”.

442 Subsection 31(8)

After “those regulations”, insert “or legislative rules, as the case may be”.

443 Subsection 31(9)

After “with regulations”, insert “or legislative rules”.

444 Subsection 32(1)

After “regulations”, insert “or the legislative rules”.

445 Subsections 32(2) and (3)

After “Regulations”, insert “or legislative rules”.

446 At the end of paragraph 32(3)(a)

Add “or legislative rules, as the case may be”.

447 Subsection 32(5)

After “Regulations”, insert “or legislative rules”.

448 Subsection 32(5)

After “those regulations”, insert “or legislative rules, as the case may be”.

449 Subsection 33(1)

After “regulations”, insert “or the legislative rules”.

450 Subsections 33(2) and (3)

After “Regulations”, insert “or legislative rules”.

451 At the end of paragraph 33(3)(a)

Add “or legislative rules, as the case may be”.

452 Subsection 33(5)

After “Regulations”, insert “or legislative rules”.

453 Subsection 33(5)

After “those regulations”, insert “or legislative rules, as the case may be”.

454 Subsection 34(1)

After “regulations”, insert “or the legislative rules”.

455 Subsections 34(2), (3) and (4)

After “Regulations”, insert “or legislative rules”.

456 Subsection 34(4)

After “those regulations”, insert “or legislative rules, as the case may be”.

457 Subsection 35(1)

After “regulations”, insert “or the legislative rules”.

458 Subsection 35(2)

After “Regulations”, insert “or legislative rules”.

459 Paragraph 35(2)(b)

After “regulations”, insert “or legislative rules”.

460 Subsections 35(3) and (4)

After “Regulations”, insert “or legislative rules”.

461 Subsection 35(4)

After “those regulations”, insert “or legislative rules, as the case may be”.

462 Subsection 36(1)

After “regulations”, insert “or the legislative rules”.

463 Subsections 36(2), (3) and (4)

After “Regulations”, insert “or legislative rules”.

464 Subsection 36(4)

After “those regulations”, insert “or legislative rules, as the case may be”.

465 Subsection 37(1)

After “regulations”, insert “or the legislative rules”.

466 Subsections 37(2), (3) and (4)

After “Regulations”, insert “or legislative rules”.

467 Subsection 37(4)

After “those regulations”, insert “or legislative rules, as the case may be”.

468 Subsection 38(1)

After “regulations”, insert “or the legislative rules”.

469 Subsection 38(2)

After “Regulations”, insert “or legislative rules”.

470 Subparagraphs 38(2)(b)(i) and (ii)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

471 Subsections 38(3) and (4)

After “Regulations”, insert “or legislative rules”.

472 Subsection 38(4)

After “those regulations”, insert “or legislative rules, as the case may be”.

473 Subsection 43(11) (heading)

Repeal the heading, substitute:

Regulations or legislative rules

474 After subsection 44(5)

Insert:

(5A) The legislative rules may provide that, for the purposes of this Act, a person specified in, or ascertained in accordance with, the legislative rules holds an *eligible interest* in the area of land.

475 After subsection 45(5)

Insert:

(5A) The legislative rules may provide that, for the purposes of this Act, a person specified in, or ascertained in accordance with, the legislative rules holds an *eligible interest* in the area of land.

476 Paragraphs 48(3)(c), (d) and (e)

After “regulations”, insert “or the legislative rules”.

477 Section 51 (heading)

Repeal the heading, substitute:

51 Regulations or legislative rules about consulting common law holders etc.

478 Subsection 51(1)

After “regulations” (first occurring), insert “or the legislative rules”.

479 Paragraph 51(1)(a)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

480 Subsection 51(2)

After “regulations” (first occurring), insert “or the legislative rules”.

481 Subsection 51(2)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

482 At the end of subsection 56(1)

Add “or the legislative rules”.

483 Subsection 56(2)

After “project,”, insert “and in deciding whether to make legislative rules for the purposes of subsection (1) specifying a particular kind of project,”.

484 Subsection 57(2) (heading)

Repeal the heading, substitute:

Regulations or legislative rules

485 Subsection 57(2)

After “regulations”, insert “or the legislative rules”.

486 Subsections 57(3), (4), (5) and (6)

After “Regulations”, insert “or legislative rules”.

487 Subsection 57(8)

After “regulations”, insert “or legislative rules”.

488 Paragraphs 76(4)(a), (b) and (d)

After “regulations”, insert “or the legislative rules”.

489 Subsections 76(9) and (10)

After “regulations”, insert “or legislative rules”.

490 Subsection 77(1) (heading)

Repeal the heading, substitute:

Regulations or legislative rules

491 Subsection 77(1)

After “regulations”, insert “or the legislative rules”.

492 Subsections 77(2) and (3)

After “Regulations”, insert “or legislative rules”.

493 At the end of paragraph 77(3)(a)

Add “or legislative rules, as the case may be”.

494 Subsection 77(6)

After “regulations”, insert “or legislative rules”.

495 Subsection 81(3)

After “regulations”, insert “or the legislative rules”.

496 Subsection 82(4)

After “regulations”, insert “or the legislative rules”.

497 Section 85 (heading)

Repeal the heading, substitute:

85 Regulations or legislative rules may impose notification requirements

498 Subsection 85(2) (heading)

Repeal the heading, substitute:

Regulations or legislative rules

499 Subsection 85(2)

After “regulations”, insert “or the legislative rules”.

500 Subsection 85(3)

After “Regulations”, insert “or legislative rules”.

501 Subsections 85(4) and (5)

After “regulations”, insert “or legislative rules”.

502 Paragraph 87(1)(b)

After “regulations”, insert “or the legislative rules”.

503 Paragraph 87(2)(a)

After “regulations”, insert “or the legislative rules”.

504 Paragraph 87(2)(b)

After “regulations”, insert “or legislative rules, as the case may be,”.

505 Subparagraphs 88(1)(c)(i) and (ii)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

506 Paragraph 89(1)(c)

After “regulations”, insert “or legislative rules”.

507 Paragraph 90(1)(d)

After “regulations”, insert “or the legislative rules”.

508 Paragraph 91(1)(d)

After “regulations”, insert “or the legislative rules”.

509 Paragraph 97(6)(c)

After “regulations”, insert “or the legislative rules”.

510 Paragraphs 98(4)(c) and (6)(c)

After “regulations”, insert “or the legislative rules”.

511 Paragraph 99(4)(c)

After “regulations”, insert “or the legislative rules”.

512 Paragraphs 128(2)(c), (d) and (e)

After “regulations”, insert “or the legislative rules”.

513 Subsection 136(4)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

514 Subsection 138(2)

Omit “and the regulations”, substitute “, the regulations and the legislative rules”.

515 Paragraph 138(2)(h)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

516 Subsection 139(1)

After “regulations”, insert “or the legislative rules”.

517 Subsections 139(2) and (3)

After “Regulations”, insert “or legislative rules”.

518 Paragraphs 140(3)(c), (d) and (e)

After “regulations”, insert “or the legislative rules”.

519 Subsection 145(3)

After “regulations”, insert “or the legislative rules”.

520 At the end of paragraph 153(2)(b)

Add “or the legislative rules”.

521 At the end of subsection 153(3)

Add “or the legislative rules”.

522 At the end of paragraph 154(2)(b)

Add “or the legislative rules”.

523 At the end of subsection 154(3)

Add “or the legislative rules”.

524 Subsection 154(4)

After “Regulations”, insert “or legislative rules”.

525 Subsection 154(5)

Before “made”, insert “or legislative rules”.

526 Subsection 157A(1)

After “regulations”, insert “or the legislative rules”.

527 Paragraph 158(2)(b)

After “regulations”, insert “or legislative rules”.

528 At the end of subparagraph 168(1)(o)(iii)

Add “or the legislative rules”.

529 Paragraph 168(1)(p)

After “regulations”, insert “or the legislative rules”.

530 Subsection 168(4)

After “Regulations”, insert “or legislative rules”.

531 At the end of section 179

Add:

- (7) The legislative rules may provide that, for the purposes of this section, the *market value* of an Australian carbon credit unit is to be ascertained in accordance with the legislative rules.

532 Paragraph 180(1)(b)

After “regulations”, insert “or the legislative rules”.

533 At the end of subparagraph 182(b)(ii)

Add “or the legislative rules”.

534 Section 190

After “regulations”, insert “or the legislative rules”.

535 Subsection 191(1)

After “regulations”, insert “or the legislative rules”.

536 Subsection 191(2)

After “regulations”, insert “or legislative rules”.

537 Subsection 192(2)

After “regulations”, insert “or the legislative rules”.

538 Subsection 192(3)

After “regulations”, insert “or legislative rules”.

539 Paragraph 197(2)(a)

After “regulations”, insert “or the legislative rules”.

540 Paragraphs 214(9)(c) and (d)

After “regulations”, insert “or the legislative rules”.

541 Section 240 (table items 4, 5, 6, 7 and 8)

After “regulations”, insert “or legislative rules”.

542 At the end of paragraph 241(3)(c)

Add “or the legislative rules”.

543 Paragraph 255(a)

Omit “and the regulations”, substitute “, the regulations and the legislative rules”.

544 Subsection 260(1)

After “regulations”, insert “or the legislative rules”.

545 At the end of paragraph 277(1)(b)

Add “or the legislative rules”.

546 Paragraphs 288(1)(a) and (b)

Omit “or the regulations”, substitute “, the regulations or the legislative rules”.

547 Subsection 293(1)

After “this Act”, insert “, the regulations or the legislative rules”.

Schedule 2—Emissions reduction safeguard mechanism

Part 1—Main amendments

National Greenhouse and Energy Reporting Act 2007

1 Section 3 (heading)

Repeal the heading, substitute:

3 Objects

2 Section 3

Omit “The object”, substitute “(1) The first object”.

3 At the end of section 3

Add:

- (2) The second object of this Act is to ensure that net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility.

4 Section 6A

Before “This Act”, insert “(1)”.

5 At the end of section 6A

Add:

- (2) Despite subsection (1), the safeguard provisions do not apply to a facility in:
- (a) the Greater Sunrise unit area; or
 - (b) the Joint Petroleum Development Area.

6 Section 6B

After “This Act”, insert “(other than the safeguard provisions)”.

7 Section 7

Insert:

1 March, when used in the safeguard provisions, means:

- (a) if the 1 March concerned is a business day—that 1 March; or
- (b) if the 1 March concerned is not a business day—the first business day after that 1 March.

account number, in relation to a Registry account, has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

Australian carbon credit unit has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

avoid, in relation to emissions of greenhouse gases, includes reduce or eliminate.

baseline emissions number has the meaning given by section 22XL.

business day means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the Australian Capital Territory.

carbon abatement means:

- (a) the removal of one or more greenhouse gases from the atmosphere; or
- (b) the avoidance of emissions of one or more greenhouse gases.

carbon abatement contract has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

covered emissions has the meaning given by section 22XI.

designated large facility has the meaning given by section 22XJ.

Doha Amendment means the amendments to the Kyoto Protocol that:

- (a) were adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, in Decision 1/CMP.8; and
- (b) are set out in Annex I to that Decision.

Note 1: The Doha Amendment was adopted in Doha, Qatar, in December 2012.

Note 2: The Doha Amendment could in 2014 be viewed on the United Nations Framework Convention on Climate Change website (<http://www.unfccc.int>).

electronic notice transmitted to the Regulator has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

eligible offsets project has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

excess emissions situation has the meaning given by section 22XE.

financial year, when used in the safeguard provisions, means a financial year that began on or after the safeguard commencement day.

Greater Sunrise unit area has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

international agreement means an agreement whose parties are:

- (a) Australia and a foreign country; or
- (b) Australia and 2 or more foreign countries.

Kyoto Protocol means the Kyoto Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997, as amended and in force for Australia from time to time.

Note: The Kyoto Protocol is in Australian Treaty Series 2008 No. 2 ([2008] ATS 2) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

monitoring period has the meaning given by section 22XG.

net emissions number has the meaning given by section 22XK.

prescribed carbon unit has the meaning given by section 22XM.

registered holder, in relation to a prescribed carbon unit, means the person in whose Registry account there is an entry for the unit.

Registry means the Australian National Registry of Emissions Units continued in existence under the *Australian National Registry of Emissions Units Act 2011*.

Registry account has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

responsible emitter has the meaning given by section 22XH.

safeguard commencement day means the day on which Part 3H commences.

safeguard provisions means the following provisions:

- (a) subsection 3(2);
- (b) section 15B;
- (c) section 18AA;
- (d) Part 3G;
- (e) Part 3H.

safeguard rules means rules made under section 22XS.

surrender, in relation to a prescribed carbon unit, means surrender under section 22XN.

8 Before section 12

Insert:

Subdivision A—Application by a controlling corporation

9 At the end of Division 1 of Part 2

Add:

Subdivision B—Application by a responsible emitter for a designated large facility etc.

15B Application by a responsible emitter for a designated large facility etc.

- (1) If:
 - (a) a person is the responsible emitter for a facility during the whole or a part of a financial year; and
 - (b) the facility is a designated large facility for the financial year; and
 - (c) the person is not a controlling corporation;

the person must apply, in accordance with this section, to be registered under this Act.

Note: Under Division 137 of the *Criminal Code*, it may be an offence to provide false or misleading information or documents to the Regulator in purported compliance with this Act.

- (2) However, a person is not required to make an application under subsection (1) if the person is registered under this Act at the end of the financial year.
- (3) An application under subsection (1) must be made by 31 August next following the financial year.
- (4) An application under subsection (1) must:
 - (a) be made to the Regulator; and
 - (b) be in a form approved by the Regulator; and
 - (c) set out the information specified by the safeguard rules for the purposes of this paragraph.

10 After Division 3 of Part 2

Insert:

Division 4—Registration of other persons

18AA Registration of other persons

- (1) The Regulator must register a person under this Act if the person has applied for registration under section 15B.
- (2) The Regulator must notify the person, in writing, of the Regulator's decision on the application.
- (3) The person is registered under this Act when the Regulator has entered the name of the person on the Register.

11 After paragraph 18B(3)(a)

Insert:

- (b) if the person was registered under section 18AA—the person is not likely to be required to give a report to the Regulator under section 22XB at any time during the next 4 financial years; and

12 After Part 3F

Insert:

Part 3G—Reporting obligations of responsible emitters of designated large facilities etc.

22XB Report to be given to Regulator

(1) If:

- (a) a person is the responsible emitter for a facility during the whole or a part of a financial year (the *relevant financial year*); and
- (b) at least one day in the relevant financial year is included in a monitoring period for the facility in relation to the person; and
- (c) if the person is the responsible emitter for the facility during the whole of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during the relevant financial year are not dealt with by a report given to the Regulator under section 19, 22G or 22X; and
- (d) if the person is the responsible emitter for the facility during a part of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during that part of the relevant financial year are not dealt with by a report given to the Regulator under section 19, 22G or 22X;

the person must, in accordance with this section, provide a report to the Regulator relating to:

- (e) if the person is the responsible emitter for the facility during the whole of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during the relevant financial year; or
- (f) if the person is the responsible emitter for the facility during a part of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during that part of the relevant financial year.

Note: Under Division 137 of the *Criminal Code*, it may be an offence to provide false or misleading information or documents to the Regulator in purported compliance with this Act.

- (2) A report under this section must:
 - (a) be given in a manner and form approved by the Regulator;
and
 - (b) set out the information specified by the safeguard rules for the purposes of this paragraph; and
 - (c) be given to the Regulator before the end of 4 months after the end of the relevant financial year.
- (3) Safeguard rules made for the purposes of paragraph (2)(b) may specify different requirements for different circumstances.

22XC Records to be kept

- (1) If:
 - (a) a person is the responsible emitter for a facility during the whole or a part of a financial year (the *relevant financial year*); and
 - (b) the person is or was required by section 22XB to provide a report to the Regulator relating to:
 - (i) if the person is the responsible emitter for the facility during the whole of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during the relevant financial year; or
 - (ii) if the person is the responsible emitter for the facility during a part of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during that part of the relevant financial year;the person must keep records of the person's activities that:
 - (c) allow the person to report accurately under section 22XB;
and
 - (d) enable the Regulator to ascertain whether the person has complied with the person's obligations under section 22XB;
and
 - (e) comply with the requirements of subsection (2) and the safeguard rules made for the purposes of subsection (3).
 - (2) The person must retain the records for 5 years from the end of the relevant financial year.
 - (3) The safeguard rules may specify requirements relating to:
-

- (a) the kinds of records; and
 - (b) the form of records;
- that must be kept under subsection (1).

Part 3H—Emissions reduction safeguard mechanism

Division 1—Introduction

22XD Simplified outline of this Part

- This Part sets up a mechanism to ensure that net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility.
- The mechanism starts on the safeguard commencement day.
- A facility is a designated large facility for a financial year if the number of tonnes of carbon dioxide equivalence of the total amount of covered emissions of greenhouse gases from the operation of the facility during the year exceeds the number specified in the safeguard rules.
- The net emissions number for a facility for a period is the number of tonnes of carbon dioxide equivalence of the total amount of covered emissions of greenhouse gases from the operation of the facility during the period:
 - (a) reduced by surrendered prescribed carbon units (for this purpose, Australian carbon credit units purchased by the Commonwealth are taken to have been surrendered); and
 - (b) increased by Australian carbon credit units that were issued in relation to the facility.
- Each designated large facility will be subject to a monitoring period. If, at the end of a monitoring period, the net emissions number for the facility for the monitoring period exceeds the baseline emissions number for the facility for the monitoring

period, an excess emissions situation exists in relation to the facility.

- If a person is the responsible emitter for a facility, the person must ensure that an excess emissions situation does not exist in relation to the facility.

Division 2—Limit on emissions

22XE Excess emissions situation

- (1) For the purposes of this Act, if:
 - (a) there is a monitoring period for a facility in relation to a person; and
 - (b) the net emissions number for the facility for the monitoring period exceeds the baseline emissions number for the facility for the monitoring period;

an ***excess emissions situation*** exists in relation to the facility for the monitoring period, unless an exemption declaration mentioned in subsection (2) is in force in relation to the facility and the monitoring period.

Note 1: For ***monitoring period***, see section 22XG.

Note 2: For ***net emissions number***, see section 22XK.

Note 3: For ***baseline emissions number***, see section 22XL.

Exemption declaration

- (2) The safeguard rules may empower the Regulator to declare in writing that an excess emissions situation does not exist in relation to a specified facility for a specified monitoring period. The declaration is to be known as an ***exemption declaration***.
- (3) The safeguard rules must provide that the Regulator may only make an exemption declaration on the application of the person who was the responsible emitter for the relevant facility during the relevant monitoring period.
- (4) The safeguard rules must provide that the Regulator must not make an exemption declaration unless the Regulator is satisfied that:

- (a) disregarding subsections 22XK(2) and (3), the net emissions number for the relevant facility for the relevant monitoring period exceeds the baseline emissions number for the facility for the monitoring period; and
- (b) that excess is the direct result of any or all of the following:
 - (i) a natural disaster;
 - (ii) criminal activity;
 - (iii) circumstances that, under the safeguard rules, are taken to be exceptional circumstances for the purposes of this subsection; and
- (c) the responsible emitter:
 - (i) has taken reasonable steps to mitigate risks of the relevant circumstance referred to in subparagraph (b)(i), (ii) or (iii) resulting in the situation described in paragraph (a); and
 - (ii) has done so both before and after the occurrence of the circumstance; and
- (d) such other conditions (if any) as are set out in the safeguard rules are satisfied.

22XF Duty to ensure that excess emissions situation does not exist

(1) If:

- (a) a person is or was the responsible emitter for a facility; and
- (b) there is a monitoring period for the facility in relation to the person;

the person must ensure that an excess emissions situation does not exist in relation to the facility for the monitoring period at any time on or after:

- (c) if the monitoring period ends at the end of a financial year—
1 March next following the financial year; or
- (d) if the monitoring period ends during a financial year—
1 March next following the financial year.

Civil penalty:

- (e) for an individual—one-fifth of the prescribed number of penalty units; or
- (f) otherwise—the prescribed number of penalty units.

- (2) For the purposes of paragraphs (1)(e) and (f), **prescribed number** means the number prescribed by the regulations.
- (3) In recommending to the Governor-General the regulations that should be made for the purposes of subsection (2), the Minister must have regard to:
 - (a) the principle that a responsible emitter must not be allowed to benefit from non-compliance, having regard to the financial advantage the responsible emitter could reasonably be expected to derive from an excess emissions situation; and
 - (b) such other matters (if any) as the Minister considers relevant.
- (4) The Minister must take all reasonable steps to ensure that regulations are in force for the purposes of subsection (2) at all times on and after the safeguard commencement day.

Division 3—Key concepts

22XG Monitoring periods

Monitoring period—single financial year

- (1) For the purposes of this Act, if:
 - (a) a person is the responsible emitter for a facility throughout a financial year; and
 - (b) the financial year is not included in a declared multi-year period for the facility; and
 - (c) the facility is a designated large facility for the financial year; the financial year is a **monitoring period** for the facility in relation to the person.

Note: For **declared multi-year period**, see subsection (5).

Monitoring period—part of a single financial year

- (2) For the purposes of this Act, if:
 - (a) a person is the responsible emitter for a facility throughout a part of a financial year; and
 - (b) the financial year is not included in a declared multi-year period for the facility; and
 - (c) the facility is a designated large facility for the financial year;

the part of the financial year is a **monitoring period** for the facility in relation to the person.

Note: For **declared multi-year period**, see subsection (5).

Monitoring period—declared multi-year period

- (3) For the purposes of this Act, if:
- (a) there is a declared multi-year period for a facility; and
 - (b) a person is the responsible emitter for the facility throughout the declared multi-year period; and
 - (c) the facility is a designated large facility for at least one of the financial years included in the declared multi-year period;
- the declared multi-year period is a **monitoring period** for the facility in relation to the person.

Note: For **declared multi-year period**, see subsection (5).

Monitoring period—part of a declared multi-year period

- (4) For the purposes of this Act, if:
- (a) there is a declared multi-year period for a facility; and
 - (b) a person is the responsible emitter for the facility throughout a part of the declared multi-year period; and
 - (c) the facility is a designated large facility for at least one of the financial years included in the declared multi-year period;
- the part of the declared multi-year period is a **monitoring period** for the facility in relation to the person.

Note: For **declared multi-year period**, see subsection (5).

Declared multi-year period

- (5) The safeguard rules may empower the Regulator to declare in writing that, for the purposes of this section, a specified period is a **declared multi-year period** for a specified facility.
- (6) The specified period must consist of 2 or more consecutive financial years.

22XH Responsible emitter

For the purposes of this Act, a person is the **responsible emitter** for a facility at a particular time if:

- (a) the person has operational control of the facility at that time; and
- (b) that time occurs on or after the safeguard commencement day.

22XI Covered emissions

For the purposes of this Act, *covered emissions* of greenhouse gases means scope 1 emissions of one or more greenhouse gases, other than emissions of a kind specified in the safeguard rules.

22XJ Designated large facility

- (1) For the purposes of this Act, a facility is a *designated large facility* for a financial year if:
 - (a) the total amount of covered emissions of greenhouse gases from the operation of the facility during the financial year has a carbon dioxide equivalence of a particular number of tonnes; and
 - (b) that number exceeds the number specified in the safeguard rules.
- (2) The Minister must take all reasonable steps to ensure that safeguard rules are in force for the purposes of paragraph (1)(b) at all times on and after the safeguard commencement day.

22XK Net emissions number

- (1) For the purposes of this Act, the *net emissions number* for a facility for a period is the number of tonnes of carbon dioxide equivalence of the total amount of covered emissions of greenhouse gases from the operation of the facility during the period.

Reduction—surrender of prescribed carbon units

- (2) If:
 - (a) a number of prescribed carbon units are surrendered on a particular occasion; and
 - (b) the notice surrendering the units contains a statement to the effect that the units are being surrendered for the purpose of reducing the net emissions number for a facility for a period;

the *net emissions number* for the facility for the period is reduced (but not below zero) by the number of prescribed carbon units surrendered.

Note: For surrender of prescribed carbon units, see section 22XN.

- (3) If:
- (a) a person surrendered a number of prescribed carbon units for the purpose of reducing the net emissions number for a facility for a period; and
 - (b) under the safeguard rules:
 - (i) there is taken to be an excess surrender situation of the person in relation to the facility for the period; and
 - (ii) one or more of those units are taken to be covered by the excess surrender situation;

the safeguard rules may provide that this section has effect as if:

- (c) the person had not surrendered the prescribed carbon units covered by the excess surrender situation for the purpose of reducing the net emissions number for the facility for the period; and
- (d) the person had, at a time ascertained in accordance with the safeguard rules, surrendered, in relation to a later period ascertained in accordance with the safeguard rules, some or all of the prescribed carbon units covered by the excess surrender situation for the purpose of reducing the net emissions number for the facility for that later period.

Increase—Australian carbon credit units that were issued in relation to the facility

- (4) If:
- (a) a person (the *relevant person*) was the responsible emitter for a facility throughout a particular period; and
 - (b) during that period, one or more Australian carbon credit units were issued under the *Carbon Credits (Carbon Farming Initiative) Act 2011* in respect of an eligible offsets project; and
 - (c) some or all of those Australian carbon credit units are attributable to carbon abatement at the facility; and
 - (d) if the units covered by paragraph (c) were issued to another person:

- (i) the relevant person consented to the other person carrying out the project; and
- (ii) the consent was given under regulations or legislative rules made for the purposes of paragraph 15(2)(h) or 27(4)(l) of the *Carbon Credits (Carbon Farming Initiative) Act 2011*;

the **net emissions number** for the facility for the period is increased by the total number of those Australian carbon credit units.

22XL Baseline emissions number

- (1) The **baseline emissions number** for a facility for a financial year is the number ascertained in relation to the facility in accordance with the safeguard rules.

Note: See also section 22XQ.

- (2) The **baseline emissions number** for a facility for a period other than a financial year is the number worked out using the formula:

$$\frac{\text{Baseline emissions number for the facility for a financial year}}{365} \times \text{Number of days in the period}$$

- (3) The Minister must take all reasonable steps to ensure that safeguard rules are in force for the purposes of subsection (1) at all times on and after the safeguard commencement day.

22XM Prescribed carbon unit

- (1) For the purposes of this Act, **prescribed carbon unit** means:
 - (a) an Australian carbon credit unit; or
 - (b) a unit that is specified in the safeguard rules.

It is immaterial whether a unit specified in the safeguard rules was issued in or outside Australia.

- (2) A unit must not be specified in safeguard rules made for the purposes of paragraph (1)(b) unless:
 - (a) the unit was issued under a scheme relating to either or both of the following:

- (i) the removal of one or more greenhouse gases from the atmosphere;
 - (ii) the avoidance of emissions of one or more greenhouse gases; and
- (b) the unit represents carbon abatement that is able to be used to meet Australia's climate change targets under:
- (i) the Kyoto Protocol; or
 - (ii) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol.

For the purposes of the application of the definition of *Kyoto Protocol* to paragraph (b)(ii), if the Doha Amendment is not in force for Australia, the Doha Amendment is taken to be in force for Australia.

Division 4—Surrender of prescribed carbon units

22XN How prescribed carbon units are surrendered

- (1) If a person is the registered holder of one or more prescribed carbon units, the person may, by electronic notice transmitted to the Regulator, surrender any or all of those units.
- (2) A notice under subsection (1) must:
 - (a) specify the prescribed carbon unit or units that are being surrendered; and
 - (b) set out a statement to the effect that the prescribed carbon unit or units are being surrendered for the purpose of reducing the net emissions number for a specified facility for a specified period; and
 - (c) specify the account number or account numbers of the person's Registry account, or the person's Registry accounts, in which there is an entry or entries for the prescribed carbon unit or units that are being surrendered.
- (3) If an Australian carbon credit unit is surrendered by a person for the purposes of reducing the net emissions number for a facility for a period:
 - (a) the unit is cancelled; and

- (b) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.
- (4) If a prescribed carbon unit (other than an Australian carbon credit unit) is surrendered by a person:
 - (a) the Regulator must take such action in relation to the unit as is specified in the safeguard rules; and
 - (b) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.
- (5) The Registry must set out a record of each notice under subsection (1).

Deemed surrender—purchased Australian carbon credit units

- (6) If:
 - (a) a person (the **relevant person**) was the responsible emitter for a facility throughout a particular period; and
 - (b) during that period, one or more Australian carbon credit units were issued under the *Carbon Credits (Carbon Farming Initiative) Act 2011* in respect of an eligible offsets project; and
 - (c) some or all of those Australian carbon credit units are attributable to carbon abatement at the facility; and
 - (d) if the units covered by paragraph (c) were issued to another person:
 - (i) the relevant person consented to the other person carrying out the project; and
 - (ii) the consent was given under regulations or legislative rules made for the purposes of paragraph 15(2)(h) or 27(4)(l) of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; and
 - (e) some or all of the units covered by paragraph (c) were purchased by the Commonwealth under a carbon abatement contract;section 22XK has effect as if:
 - (f) the units covered by paragraph (e) had been surrendered by electronic notice transmitted to the Regulator under

- subsection (1) of this section instead of being purchased by the Commonwealth under a carbon abatement contract; and
- (g) the notice surrendering the units had contained a statement to the effect that the units are being surrendered for the purpose of reducing the net emissions number for the facility for the period.

Division 5—Other matters

22XO Concurrent operation of State and Territory laws

- (1) The safeguard provisions and the safeguard rules are not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with the safeguard provisions and those rules.
- (2) Subsection (1) of this section has effect subject to section 5.

22XP Administrative decisions under the safeguard rules etc.

- (1) The safeguard rules may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.
- (2) The safeguard rules may empower the Regulator to give advisory notices.
- (3) Subsection (2) does not limit subsection (1).

22XQ Baseline determinations made under the safeguard rules etc.

Scope

- (1) This section applies to a determination that:
- (a) is made by the Regulator under the safeguard rules; and
 - (b) relates to the ascertainment of the baseline emissions number for a facility for a financial year.

Commencement of determination

- (2) The safeguard rules may provide that a determination comes into force:

- (a) when it is made; or
- (b) if:
 - (i) an earlier day is specified in the determination; and
 - (ii) that day is not earlier than the financial year in which the determination was made;on the day specified; or
- (c) if:
 - (i) an earlier day is specified in the determination; and
 - (ii) that day is not earlier than the financial year preceding the financial year in which the determination was made; and
 - (iii) the effect of the determination is to increase the baseline emissions number for a facility for a financial year;on the day specified.

Audit

- (3) The safeguard rules may provide that an application for a determination is to be accompanied by an audit report that is:
 - (a) prescribed by the safeguard rules; and
 - (b) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose.

22XR Alternative constitutional basis

- (1) Without limiting their effect apart from this section, the safeguard provisions also have effect as provided by this section.

External affairs

- (2) The safeguard provisions also have the effect they would have if:
 - (a) subsection (3) had not been enacted; and
 - (b) the safeguard provisions did not apply except to the extent to which they relate to:
 - (i) matters of international concern; or
 - (ii) matters external to Australia.

Limited types of responsible emitters

- (3) The safeguard provisions also have the effect they would have if:
-

- (a) subsection (2) had not been enacted; and
- (b) each reference in:
 - (i) section 15B; and
 - (ii) section 18AA; and
 - (iii) section 22XB; and
 - (iv) section 22XC; and
 - (v) section 22XF;to a person were, by express provision, confined to a person who is:
 - (vi) a constitutional corporation; or
 - (vii) an authority of the Commonwealth.

22XS Safeguard rules

- (1) The Minister may, by legislative instrument (and subject to subsection (2)), make rules (*safeguard rules*) prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the safeguard rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to the safeguard provisions.
- (2) To avoid doubt, the safeguard rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention;
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) amend this Act.
- (3) Safeguard rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but safeguard rules are taken to be consistent with the regulations to the extent that safeguard rules are capable of operating concurrently with the regulations.

Part 2—Consequential amendments

Carbon Credits (Carbon Farming Initiative) Act 2011

12A Subparagraph 27(4A)(b)(i)

After “Territory”, insert “(other than the *National Greenhouse and Energy Reporting Act 2007*)”.

National Greenhouse and Energy Reporting Act 2007

13 Section 7 (at the end of the definition of *audit team leader*)

Add “or a safeguard audit”.

14 Section 7 (definition of *audit team member*)

After “energy audit”, insert “or a safeguard audit”.

14A Section 7 (definition of *foreign corporation*)

Repeal the definition.

15 Section 7

Insert:

foreign person means any of the following:

- (a) an individual who is not ordinarily resident in Australia;
- (b) a body corporate that:
 - (i) is incorporated outside Australia; or
 - (ii) is an authority of a foreign country;
- (c) a corporation sole that:
 - (i) is incorporated outside Australia; or
 - (ii) is an authority of a foreign country;
- (d) a body politic of a foreign country;
- (e) a trust, where the trustee, or a majority of the trustees, are covered by any or all of the above paragraphs.

16 Section 7 (definition of *greenhouse and energy information*)

After “Regulator under this Act”, insert “or the safeguard rules”.

17 Section 7 (definition of *greenhouse and energy information*)

Omit “under this Act or the regulations”, substitute “under this Act, the regulations or the safeguard rules”.

18 Section 7

Insert:

local governing body means a local governing body established by or under a law of a State or Territory.

non-group entity means a person who is not a member of a controlling corporation’s group.

19 Section 7 (definition of *operational control*)

Omit “11A or 11B”, substitute “11A, 11B or 11C”.

20 Section 7

Insert:

person means any of the following:

- (a) an individual;
- (b) a body corporate;
- (c) a trust;
- (d) a corporation sole;
- (e) a body politic;
- (f) a local governing body.

safeguard audit means an audit carried out for the purposes of preparing an audit report prescribed by safeguard rules made for the purposes of subsection 22XQ(3).

safeguard audit report means an audit report prescribed by safeguard rules made for the purposes of subsection 22XQ(3).

trust means a person in the capacity of trustee or, as the case requires, a trust estate.

trustee has the same meaning as in the *Income Tax Assessment Act 1997*.

trust estate has the same meaning as in the *Income Tax Assessment Act 1997*.

21 At the end of paragraph 9(1)(b)

Add “or 54A”.

22 Subsection 11(1)

Omit “group entity” (wherever occurring), substitute “person”.

23 At the end of paragraph 11(1)(b)

Add “or 55A”.

24 Subsection 11(3)

Omit “group entity”, substitute “person”.

25 Subsection 11(4)

Omit “11A and 11B”, substitute “11A, 11B and 11C”.

26 Section 11A (heading)

Repeal the heading, substitute:

11A Operational control—person with greatest authority

27 Paragraph 11A(1)(a)

Omit “group entities”, substitute “persons”.

28 Paragraph 11A(1)(b)

Omit “group entity”, substitute “person”.

29 Paragraph 11A(1)(c)

After “55”, insert “or 55A”.

30 Subsection 11A(2)

Omit “group entity”, substitute “person”.

31 Section 11B (heading)

Repeal the heading, substitute:

11B Operational control—nominated person

32 Paragraph 11B(1)(a)

Omit “more group entities”, substitute “more persons”.

33 Paragraph 11B(1)(a)

Omit “*relevant group entities*”, substitute “*relevant persons*”.

34 Paragraph 11B(1)(b)

Omit “group entity”, substitute “person”.

35 Paragraph 11B(1)(c)

After “55”, insert “or 55A”.

36 Subsection 11B(2)

Omit “group entities”, substitute “persons”.

37 Subsection 11B(2)

Omit “group entity”, substitute “person”.

38 Paragraph 11B(4)(a)

Omit “group entities is a foreign corporation”, substitute “persons is a foreign person”.

39 Paragraph 11B(4)(b)

Omit “group entities is not a foreign corporation”, substitute “persons is not a foreign person”.

40 Subsection 11B(4)

Omit “foreign corporation cannot”, substitute “foreign person cannot”.

41 Paragraph 11B(5)(b)

Omit “group entities”, substitute “persons”.

42 Subsection 11B(10)

Omit “group entity” (wherever occurring), substitute “person”.

43 Subsection 11B(15)

Omit “group entity”, substitute “person”.

44 Subsection 11B(17)

Omit “group entities”, substitute “persons”.

45 Subsection 11B(21)

Omit “group entity”, substitute “person”.

46 Subsection 11B(22)

Omit “group entity”, substitute “person”.

47 At the end of subsection 11B(22)

Add “or 55A”.

48 After section 11B

Insert:

11C Operational control—trust with multiple trustees

Eligible nomination test

- (1) For the purposes of this section, a facility *passes the eligible nomination test* at a particular time if:
 - (a) because of section 11, 11A or 11B, a trust has operational control of the facility at that time; and
 - (b) at that time, there are 2 or more trustees (the *relevant trustees*) of the trust; and
 - (c) no declaration under section 55 or 55A applies in relation to the facility at that time; and
 - (d) that time occurs in a designated financial year.

Nomination

- (2) 2 or more trustees may jointly nominate one of them to be the nominated trustee in relation to a facility throughout the period:
 - (a) beginning at the start of the day specified in the nomination as the day on which the nomination is to come into force (the *start day*); and

- (b) ending at a later time specified in the nomination.
- (3) The nomination must:
 - (a) be in writing; and
 - (b) be in a form approved by the Regulator; and
 - (c) be accompanied by such information as is specified in the regulations; and
 - (d) be accompanied by such documents (if any) as are specified in the regulations.
- (4) If:
 - (a) any of those trustees is a foreign person; and
 - (b) any of those trustees is not a foreign person;a foreign person cannot be nominated.
- (5) The nomination has no effect unless, at the beginning of the start day:
 - (a) the facility passes the eligible nomination test; and
 - (b) the nominators are the relevant trustees.
- (6) The start day may occur before the nomination is made.
- (7) If the start day occurs during a particular designated financial year, the nomination must not be made after 31 August next following the designated financial year.
- (8) The start day may be later than the day on which the nomination is made, so long as:
 - (a) the start day occurs in the same financial year as the day on which the nomination is made; or
 - (b) the start day occurs in the financial year next following the financial year in which the nomination is made.

Cancellation of nomination

- (9) The Regulator may cancel a nomination that relates to a facility if the Regulator is satisfied that:
 - (a) the facility passes the eligible nomination test, but the nominated trustee is not a relevant trustee; or
 - (b) the facility does not pass the eligible nomination test; or

- (c) the nominated trustee has become an externally-administered body corporate; or
- (d) the nominated trustee has become an insolvent under administration; or
- (e) the nominated trustee has an unsatisfactory compliance record.

Note: For *unsatisfactory compliance record*, see section 11D.

- (10) A cancellation of a nomination takes effect on the day specified in the notice of cancellation as the day on which the cancellation is to take effect.
- (11) If the Regulator cancels a nomination, the Regulator must give written notice of the cancellation to each nominator.

Replacement nomination

- (12) If:
 - (a) a nomination (the *original nomination*) is in force in relation to a facility; and
 - (b) another nomination is made in relation to the facility;the other nomination has no effect unless it is expressed to replace the original nomination.

Revocation of nomination

- (13) If:
 - (a) a nomination (the *original nomination*) is in force in relation to a facility; and
 - (b) another nomination is made in relation to the facility; and
 - (c) the other nomination is expressed to replace the original nomination;the original nomination is taken to have been revoked at the beginning of the start day for the other nomination.

Operational control—nomination made

- (14) If:
 - (a) a nomination is in force in relation to a facility throughout a particular period; and

(b) the facility passes the eligible nomination test at all times during the period;
the nominated trustee is taken, for the purposes of this Act, to have **operational control** of the facility throughout the period.

Operational control—nomination not made

- (15) If:
- (a) no nomination is in force in relation to a facility at any time during a particular period; and
 - (b) the facility passes the eligible nomination test at all times during the period;
- each relevant trustee is taken, for the purposes of this Act, to have **operational control** of the facility throughout the period.

Notification

- (16) If:
- (a) a nomination is in force in relation to a facility; and
 - (b) the facility ceases to pass the eligible nomination test;
- each nominator must, within 30 days after the cessation, notify the cessation to the Regulator unless the cessation has previously been notified to the Regulator.

Exceptions

- (17) A trustee is not required to comply with subsection (16) if the question of who has operational control of the facility is not relevant (whether directly or indirectly) to a requirement under this Act.
- (18) A trustee is not required to comply with subsection (16) if the facility ceases to pass the eligible nomination test because of the making of a declaration under section 55 or 55A.

Definition

- (19) In this section:
- nomination** means a nomination under subsection (2).

48A At the end of paragraph 16(1)(b)

Add:
; (vi) the safeguard provisions.

49 After subparagraph 23(1)(b)(i)

Insert:
(ia) the safeguard rules or the performance of duties in relation to the safeguard rules; or

50 Subsection 25(1)

Omit “or 22X”, substitute “, 22X or 22XB”.

51 Subsection 45(1)

Omit “or the regulations” (wherever occurring), substitute “, the regulations or the safeguard rules”.

51A At the end of Part 5

Add:

Division 5—Injunctions

49 Injunctions

Scope

- (1) This section applies to each of the following provisions:
- (a) subsection 11B(20);
 - (b) subsection 11C(16);
 - (c) subsection 12(1);
 - (d) subsection 15B(1);
 - (e) subsection 19(1);
 - (f) subsection 20(4);
 - (g) subsection 21(4);
 - (h) subsection 21A(2);
 - (i) subsection 22(1);
 - (j) subsection 22(2);
 - (k) subsection 22G(1);
 - (l) subsection 22H(1);

- (m) subsection 22X(2);
- (n) subsection 22XA(1);
- (o) subsection 22XB(1);
- (p) subsection 22XC(1);
- (q) subsection 22XF(1).

Enforceable provisions

- (2) The provision is enforceable under Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

Authorised person

- (3) The Regulator is an authorised person in relation to the provision for the purposes of Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

Relevant court

- (4) The Federal Court of Australia is a relevant court in relation to the provision for the purposes of Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

Extension to external Territories etc.

- (5) A reference to this Act in sections 6 to 6C of this Act includes a reference to Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies in relation to the provision.

52 After section 54

Insert:

54A Regulator may declare facility—non-group entity

- (1) The Regulator may declare that an activity or series of activities (including ancillary activities) are a facility:
 - (a) on application by a non-group entity; or
 - (b) on the Regulator's own initiative.
- (2) An application must:
 - (a) identify the facility for which a declaration is sought; and

- (b) include any other information required by the regulations;
and
 - (c) be given in a manner and form approved by the Regulator.
- (3) In considering making a declaration that an activity or series of activities are a facility, the Regulator must have regard to:
 - (a) the matters dealt with in regulations made for the purposes of paragraph 9(1)(a); and
 - (b) the need for each facility to be distinct from, and not overlap with, activities that constitute other facilities.
- (4) The Regulator must notify, in writing, an applicant under paragraph (1)(a) of a decision under subsection (1) to declare a facility or to refuse the application.
- (5) If the Regulator makes a declaration under paragraph (1)(b), the Regulator must notify, in writing, the person that has, or that the Regulator reasonably believes has, operational control of the facility to which the declaration relates.

53 After section 55

Insert:

55A Regulator may declare non-group entity has operational control

- (1) The Regulator may declare that a non-group entity has operational control of a facility:
 - (a) on application by the non-group entity; or
 - (b) on the Regulator's own initiative.
- (2) An application must:
 - (a) identify the facility for which a declaration of operational control is sought; and
 - (b) include any other information required by the regulations;
and
 - (c) be given in a manner and form approved by the Regulator.
- (3) In considering making a declaration that a non-group entity has operational control of a facility, the Regulator must have regard to the matters dealt with in paragraph 11(1)(a) and regulations made for the purposes of that paragraph.

- (4) The Regulator must not declare that a non-group entity has operational control of a facility unless the Regulator is satisfied that the non-group entity has substantial authority to introduce and implement either or both of the following for the facility:
 - (a) operating policies;
 - (b) environmental policies.
- (5) The Regulator must notify, in writing, an applicant under paragraph (1)(a) of a decision under subsection (1) to declare the non-group entity to have operational control of the facility or to refuse the application.
- (6) If the Regulator makes a declaration under paragraph (1)(b), the Regulator must notify, in writing, the non-group entity which the Regulator has declared to have operational control of the facility to which the declaration relates.

54 After paragraph 56(aaa)

Insert:

- (aab) cancel a nomination under section 11C;

55 After paragraph 56(a)

Insert:

- (ab) not register a person under section 18AA;

56 After paragraph 56(dc)

Insert:

- (dd) refuse to make a determination under the safeguard rules;
- (de) make a determination under the safeguard rules;
- (df) refuse to make a declaration under the safeguard rules;
- (dg) make a declaration under the safeguard rules;

57 After paragraph 56(g)

Insert:

- (ga) refuse an application under section 54A;
- (gb) declare a facility under paragraph 54A(1)(b);

58 After paragraph 56(i)

Insert:

Schedule 2 Emissions reduction safeguard mechanism

Part 2 Consequential amendments

- (ia) refuse an application under section 55A;
- (ib) declare that a non-group entity has operational control of a facility under paragraph 55A(1)(b);

59 At the end of subsection 75(1)

Add:

- ; and (e) preparing for and carrying out safeguard audits; and
- (f) preparing safeguard audit reports.

Part 3—Transitional provisions

60 Regulations—civil penalty

The Minister must take all reasonable steps to ensure that:

- (a) regulations are made for the purposes of subsection 22XF(2) of the *National Greenhouse and Energy Reporting Act 2007* (as amended by this Schedule), in accordance with section 4 of the *Acts Interpretation Act 1901*; and
- (b) those regulations are so made before 1 October 2015.

61 Safeguard rules—designated large facility and baseline emissions number

- (1) The Minister must take all reasonable steps to ensure that:
 - (a) safeguard rules are made for the purposes of paragraph 22XJ(1)(b) and subsection 22XL(1) of the *National Greenhouse and Energy Reporting Act 2007* (as amended by this Schedule), in accordance with section 4 of the *Acts Interpretation Act 1901*; and
 - (b) those safeguard rules are so made before 1 October 2015.
- (2) The Minister must cause to be published on the Department's website a statement that explains how safeguard rules made as mentioned in subitem (1) give effect to the second object of the *National Greenhouse and Energy Reporting Act 2007* (as amended by this Schedule).

[Minister's second reading speech made in—
House of Representatives on 18 June 2014
Senate on 26 June 2014]

(135/14)
